THE GENERAL STATUTES OF NORTH CAROLINA

1953 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
A. HEWSON MICHIE, S. G. ALRICH, W. M. WILLSON
AND BEIRNE STEDMAN

Volume 4

Place in Pocket of Corresponding Volume of Main Set

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Preface

This Supplement to volume 4 contains the Constitutions of North Carolina and of the United States, which formerly appeared under Division I in original volume 1, and which will ultimately appear under Division XIX-A in recompiled volume 4A.

This Supplement also contains amendments and supplementary annotations to the rules of practice in the Supreme Court of North Carolina, additions to the comparative tables, and the index. The index is confined mainly to new laws and such amendatory laws as are not reflected in the original index. In addition, the index includes many references enlarging upon the treatment of certain topics found in the recompiled volumes of the General Statutes.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplment, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Constitutions:

The Constitution of North Carolina of 1868, with amendments to 1952.
The Constitution of the United States.

Annotations:

Sources of the annotations to the North Carolina Constitution:

North Carolina Reports volumes 1-236.
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-202.
Federal Supplement volumes 1-110.
United States Reports volumes 1-345 (p. 246).
Supreme Court Reporter volumes 1-73 (p. 655).
North Carolina Law Review volumes 1-31 (p. 373).

Sources of the annotations to the Rules of Court:

North Carolina Reports volumes 223-236 .
Federal Reporter 2nd Series volumes 134 (p. 417)-202.
Federal Supplement volumes 49 (p. 225)-110.
United States Reports volumes 318-345 (p. 246).
Supreme Court Reporter volumes 63 (p. 862)-73 (p. 655).
North Carolina Law Review volumes 22-31 (p. 373).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. ..... Potter's Revisal (1821, 1827)
R. S. ..... Revised Statutes (1837)
R. C. ..... Revised Code (1854)
C. C. P. ..... Code of Civil Procedure (1868)
Code ..... Code (1883)
Rev. ..... Revisal of 1905
C. S. ..... Consolidated Statutes (1919, 1924)

The General Statutes of North Carolina
1953 Cumulative Supplement

Volume 4

Constitution of North Carolina

Adopted April 24, 1868, with Amendments to 1952

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PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign ruler of nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution:

ARTICLE I

DECLARATION OF RIGHTS

That the great, general and essential principles of liberty and free government

may be recognized and established, and that the relations of this State to the Union and Government of the United States, and those of the people of this State to the rest of the American people, may be defined and affirmed, we do declare:

§ 1. The equality and rights of persons.—That we hold it to be self-evident that all persons 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. (Const. 1868; 1945, c. 634, s. 1.)

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment substituted "persons" for "men."

Meaning of "Liberty." — The term "liberty," as used in this section and § 17 of this article, does not consist simply of the right to be free from arbitrary physical restraint or servitude, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. It includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. State v. Ballance, 229 N. C. 764, 51 S. E. (2d) 731 (1949).

"Liberty" Qualified by Common-Law Doctrines. — It is a recognized principle that a personal liberty is a constitutional right, and any act of Assembly which violates this right is not the law of the land and would be void by Art. I, § 17, of the Constitution. However, the meaning of general expressions such as "liberty" is qualified by the doctrines of the common law, and which as modified to suit our institutions, have been held a part of the law of this State. London v. Headen, 76 N. C. 72 (1877).

Same—Penalty for Refusing to Accept Office.—It is a doctrine of the common law that every citizen in peace, as well as in war, owes his services to the State when they are demanded, and a legislative enactment prescribing a penalty of $25 against any person who is duly elected or appointed town constable and who refuses to qualify is not violative of Art. I, § 17, which is a protective provision of the personal liberty referred to in this section. London v. Headen, 76 N. C. 72 (1877).

Occupational Qualifications.—While the legislature, in the exercise of the State police power, may protect the public against incapacity, fraud and oppression by establishing standards of personal fitness and requiring the examination and licensing of those desiring to engage in the learned professions and occupations requiring scientific or technical knowledge or skill, or which involve a trust relationship with the public, it may not impose such restrictions upon those wishing to engage in the ordinary trades or occupations which are harmless in themselves, since the right to choose and pursue a means of livelihood is a property right and a personal liberty guaranteed by the Constitution, which right may be interfered with only when necessary to the protection of the public safety or welfare. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Exercise of Police Power Not Unlimited.—Compulsory vaccination is a valid exercise of governmental police power for the public welfare, health and safety, but if there are exceptional cases, where owing to the peculiar state of the health or system, vaccination would be dangerous, then the legislature cannot validly compel the person to submit to such protective measure, since this would be in violation of the rights recognized by this section as pre-existing and inherent in the individual. State v. Hay, 126 N. C. 999, 35 S. E. 459 (1900).

This section does not preclude the legislature from making classifications and distinctions in the application of laws provided they are reasonable and just and not arbitrary. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Statute making certain war veterans eligible for license to practice barbering without being examined does not violate this section. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Statute Regulating Practice of Optometry.—A portion of § 90-115, relating to the practice of optometry, was held violative of this section. Palmer v. Smith, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

Statute providing for the licensing and supervision of photographers is violative of this section. State v. Ballance, 229 N. C. 764, 51 S. E. (2d) 731 (1949), overruling State v. Lawrence, 213 N. C. 674, 197 S. E. 586, 116 A. L. R. 1366 (1938).

Cited in State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ 2. **Political power and government.**—That all political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole. (Const. 1868.)

In General.—In construing the provisions of the Constitution in regard to elections (see Art. VI, § 1) it should be kept in mind that this is a government of the people in which the will of the people—the majority—legally expressed, must govern and that these provisions should be liberally construed, that tend to promote a fair election, or expression of this popular will. Quinn v. Lattimore, 120 N. C. 426, 26 S. E. 638 (1897).

Repeal of Laws.—It is axiomatic that since all political power is derived from the people and all government originates from them, the sovereign power of the people, expressed through their chosen representatives in the General Assembly, is supreme, and a law by them enacted may not be set aside by the courts unless it contravenes some prohibition or mandate of the Constitution by which the people of the State have elected to be limited and and restrained, or unless it violates some provision of the granted powers of federal government contained in the Constitution of the United States. State v. Warren, 211 N. C. 75, 189 S. E. 108 (1937).

Cited in State v. Pasley, 180 N. C. 695, 104 S. E. 533 (1920); State v. Hickey, 198 N. C. 45, 150 S. E. 615 (1929); State v. Dixon, 215 N. C. 161, 1 S. E. (2d) 521 (1939) (dis. op.); Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

§ 3. **Internal government of the State.**—That the people of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right should be exercised in pursuance of law, and consistently with the Constitution of the United States. (Const. 1868.)

Duty to Follow Decisions of Supreme Court.—It is the duty of the Supreme Court of the State to follow the decisions of the Supreme Court of the United States, upon questions involved in interstate commerce where Congress has assumed control of the matter relating thereto, and involved in the litigation. But in intrastate cases, the decisions of the State Supreme Court are binding and will be followed in the U. S. Supreme Court though they appear "absurd and illogical." Norris v. Telegraph Co., 174 N. C. 92, 93 S. E. 465 (1917).

Regulation of Criminal Practice.—The legislature has power to shape the criminal procedure of the State to provide remedies required by the exigencies of the present time. State v. Lewis, 142 N. C. 626, 55 S. E. 600 (1906).

§ 4. **That there is no right to secede.**—That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union or to sever said nation, ought to be resisted with the whole power of the State. (Const. 1868.)

§ 5. **Of allegiance to the United States Government.**—That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof can have any binding force. (Const 1868.)

§ 6. **Public debt; bonds issued under ordinance of Convention of 1868, '68-'69, '69-'70, declared invalid; exception.** — The State shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; nor shall the General As-

sembly assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, expressed or implied, any debt or bond incurred, or issued, by authority of the Convention of the year one thousand eight hundred and sixty-eight, nor any debt or bond incurred or issued by the Legislature of the year one thousand eight hundred and sixty-eight, either at its special session of the year one thousand eight hundred and sixty-eight, or at its regular sessions of the years one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and one thousand eight hundred and sixty-nine and one thousand eight hundred and seventy, except the bonds issued to fund the interest on the old debt of the State, unless the proposing to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the State, at a regular election held for that purpose. (Const. 1868; 1872-3, c. 85; 1879, c. 268.)

Editor's Note.—In the Constitution of 1868, this section read as follows: "Sec. 6. To maintain the honor and good faith of the State untarnished, the public debt, regularly contracted before and since the Rebellion shall be regarded as inviolable and never be questioned; but the State shall never assume or pay, or authorize the collection of, any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave." Pursuant to c. 85, Public Laws of 1872-73, this section was amended by striking out the first clause down to and including the word "but". The clause beginning with "nor" and ending with "purpose" was added pursuant to c. 268, Public Laws of 1879.

Proceedings to settle and adjudge the legal validity of claims against the State were dismissed in Baltzer v. State, 104 N. C. 265, 10 S. E. 153 (1889), for the reason that the General Assembly was expressly forbidden by this section to pay the claim presented therein, the Supreme Court of North Carolina saying that "it would be idle, futile and ridiculous for this court to declare and adjudge the validity of a claim, against the State, and recommend to the General Assembly to provide for its payment, when the Constitution expressly forbids it to pay or provide for the payment of such a claim." Calkins Dredging Co. v. State, 191 N. C. 243, 131 S. E. 665 (1926).

§ 7. **Exclusive emoluments, etc.** — No person or set of persons are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services. (Const. 1868; 1945, c. 634, s. 1.)

Cross Reference.—See § 45-21.34 and the note thereto.

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c 634. The amendment substituted the words "person or set of persons" for "man or set of men."

The majority of the cases wherein the litigating parties have relied on this section as the chief factor in the case which they make out, involve the determination of the question whether the particular grant or privilege given to a certain body can be construed as a valid exercise of the police power, and if so then the case is taken beyond the operative force of this section, since its provisions are not applicable to those powers and privileges, the exercise of which is for the benefit and good of the public.

Purpose.—In summarizing the purpose of this section the court in Simonton v. Lanier, 71 N. C. 498 (1874), speaking through Justice Bynum, says: "The wisdom and foresight of our ancestors is nowhere more clearly shown than in providing these fundamental safeguards against partial and class legislation, the insidious and ever-working foes of free and equal government."

This section is a fundamental democratic principle of "equal rights and opportunities to all, special privileges to none." Newman v. Watkins, 208 N. C. 675, 182 S. E. 453 (1935) (dis. op.).

Any law which, purporting to operate on a particular class, places upon those engaged in the business in a portion of the State a burden for the privilege which is exercised freely and without additional charge by those engaged in the business in other parts of the State is arbitrary in classification because it discriminates within the class originally selected and extends to the latter a privilege and immunity not accorded to those who must, under the law, pay the additional exaction or quit the business. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Motivation of Legislation.—The constitutional limitation contained in this sec-

tion, has been frequently invoked by the Supreme Court to strike down legislation conferring special privileges not in consideration of public service, but where the motivation is for a public purpose and in the public interest, and does not confer exclusive privilege, legislation has been upheld. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

This section does not preclude the legislature from making classifications and distinctions in the application of laws provided they are reasonable and just and not arbitrary. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

The State cannot authorize city to donate property, or to grant privileges to one class of citizens not enjoyed by all, except in consideration of public services. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945), citing Brown v. Board of Com'rs, 223 N. C. 744, 28 S. E. (2d) 104 (1943).

An expenditure by a municipality for special training of a police officer does not grant an exclusive emolument or privilege to the officer contrary to this section. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500.

Services in the armed forces during war are "public services" within the meaning of this section. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947); Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

Statute making certain war veterans eligible for license to practice barbering without being examined does not violate this section. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Benefits received by State employees under the Retirement Fund are deferred payments of salary for services rendered, and therefore such payments do not offend this section of the State Constitution. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

Public Service Corporations.—The grant of a special charter to a railroad or other like corporation is not in conflict with this section of the Constitution, the decision in this State being to the effect that the charters of public service corporations come directly within the exception contained in this provision. Reid v. Norfolk Sou. R. Co., 162 N. C. 355, 78 S. E. 306 (1913). This principle will be applied in behalf of municipal corporations, an agency of the State, created for the benefit of the public. Kornegay v. Goldsboro, 180 N. C. 441, 105 S. E. 187 (1920).

Private Corporations.—A provision in a charter of a warehouse corporation to the effect that such corporation shall not be liable for loss or damages not provided for in its warehouse receipt or contract, attempts to confer exclusive privileges and is therefore unconstitutional under this section. Motley v. Warehouse Co., 122 N. C. 347, 30 S. E. 3 (1898); Motley v. Finishing Co., 124 N. C. 232, 32 S. E. 555 (1899).

A provision in a bank's charter allowing it to charge more than the legal rate of interest is void under this section of the Constitution, where no public services are rendered in consideration of the grant. Simonton v. Lanier, 71 N. C. 498 (1874).

Exempting corporations chartered prior to a certain date from the proscription against emptying into streams substances inimical to fish violates this section. State v. Glidden Co., 228 N. C. 664, 46 S. E. (2d) 860 (1948). See § 113-172.

A local public law which provides that the provisions of § 44-14, 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 (1932).

Public-Local Law as to Sale of Claims against Closed Banks Held Invalid.—Public-Local Laws and § 53-19, providing that depositors of certain closed banks might sell their claims for deposits to persons indebted to the banks at the date of their closing, and that the liquidation agents of such banks should accept such purchased claims at their face value in payment of the purchasers' debts to the banks, were held unconstitutional and void, being in violation of this section, in Edgerton v. Hood, 205 N. C. 816, 172 S. E. 481 (1934).

Regulation as to Maintenance of Market House.—It is within the power of a city or town to provide, by contract with its citizens, a market house and exclude with certain reasonable exceptions, the sale of fish at other places, it appearing that, under the contract, the market house was to remain under the full control of the municipal authorities, and that reasonable accommodation had been provided for the vendors, with reasonable charges for the stalls. State v. Perry, 151 N. C. 661, 65 S. E. 915 (1909).

Regulation as to the Practice of Med-

icine.—An act prohibiting the practice of medicine without registration is not brought within the inhibition of this section of the Constitution because it contains a proviso to the effect that the act shall not apply to midwives nor to nonresident consulting physicians, as this does not constitute an exclusive privilege within the meaning of the section. State v. Van Doran, 109 N. C. 864, 14 S. E. 32 (1891). See also, State v. Biggs, 133 N. C. 729, 46 S. E. 401 (1903).

Regulation as to Pilots.—The selection by a commission of persons qualified to act as pilots is not violative of this section. St. George v. Hardie, 147 N. C. 88, 60 S. E. 920 (1908).

Regulation of Vehicles for Hire.—A municipal ordinance requiring all operators of passenger motor vehicles for hire within the city to deposit with the treasurer of the city policies of liability insurance in responsible companies authorized to do business in the State in a stipulated amount for each car operated, or cash or securities in the sum required, is in contravention of this section and § 31, in that the ordinance fails to provide that the security required might be furnished by one or more solvent individual sureties. State v. Sasseen, 206 N. C. 644, 175 S. E. 142 (1934). See 13 N. C. Law Rev. 222, for a note on this case.

Exemption from Jury Service.—In State v. Cantwell, 142 N. C. 604, 55 S. E. 820 (1906), Mr. Justice Walker in a dissenting opinion says that exemption from jury service by virtue of services in a fire department for five years is within the meaning of the word "privilege" as used in the Constitution, which may be conferred in consideration of public services, and is not subject to revocation by the legislature.

Contract to Relieve Railway of Expense of Removing Tracks Held Valid. — The State Highway Commission agreed to appropriate a sum of money for the improvement of a city street upon condition that tracks and facilities of a street railway company be removed therefrom. The railway company was operating under a franchise having twenty more years to run, which provided that the railway company should save the city harmless from any damage resulting from the construction of its tracks. The city entered into a contract with the railway company providing that in consideration of abandonment of its franchise along said street the city would acquire for it an alternate right of way and would remove the tracks from the street. The court held that the promise by the city to remove the tracks did not constitute a special emolument not in consideration of public service. Boyce v. Gastonia, 227 N. C. 139, 41 S. E. (2d) 355 (1947).

Statute including deputy sheriffs within term "employee" as used in Workmen's Compensation Act. (G. S. § 97-2) held consonant with the provisions of this section. Towe v. Yancey County, 224 N. C. 579, 31 S. E. (2d) 754 (1944).

Statute conferring special privilege upon firemen held violation of this section. See note to § 97-53.

Gratuity to Individual for Adjusting Claim is Unauthorized.—This section constitutes a specific constitutional prohibition against gifts of public money, and the legislature has no power to compel or even to authorize a municipal corporation to pay a gratuity to an individual to adjust a claim which the municipality is under no legal obligation to pay. Brown v. Board of Com'rs, 223 N. C. 744, 28 S. E. (2d) 104 (1943).

Applied in Blevins v. Northwest Carolina Utilities, 209 N. C. 683, 184 S. E. 517 (1936) (dis. op.); Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co., 210 N. C. 29, 185 S. E. 482 (1936), holding § 45-34 constitutional and valid; Allen v. Carr, 210 N. C. 513, 187 S. E. 809 (1936), holding valid § 90-38, requiring a second examination of former licensed dentists returning to the State; Cowan v. Security Life, etc., Co., 211 N. C. 18, 188 S. E. 812 (1936), holding § 58-32 does not authorize insurance companies to charge more than six per cent interest; State v. Warren, 211 N. C. 75, 189 S. E. 108 (1937), holding invalid c. 241, Public-Local Laws 1927, requiring real estate brokers and salesmen to be licensed by a special commission in designated counties.

Quoted in Dalton v. Brown & Co., 159 N. C. 175, 75 S. E. 40, 42 L. R. A. (N. S.) 506 (1912); Little v. Miles, 204 N. C. 646, 169 S. E. 220 (1933); Woltz v. Asheville Safe Deposit Co., 206 N. C. 239, 173 S. E. 587 (1934); State v. Atlantic Ice, etc., Co., 210 N. C. 742, 188 S. E. 412 (1936); State v. Lawrence, 213 N. C. 674, 197 S. E. 586, 116 A. L. R. 1366 (1938) (dis. op.); State v. Dixon, 215 N. C. 161, 1 S. E. (2d) 521 (1939) (dis. op.); State v. Mitchell, 217 N. C. 244, 7 S. E. (2d) 567 (1940); Raleigh v. Jordan, 218 N. C. 55, 9 S. E. (2d) 507 (1940) (dis. op.).

Cited in Bennett v. Southern Ry. Co., 211 N. C. 474, 191 S. E. 240 (1937).

§ 8. **The legislative, executive, and judicial powers distinct.**—The

legislative, executive, and supreme judicial powers of the government ought to be forever separate and distinct from each other. (Const. 1868.)

Cross Reference.—See § 1-97 and notes.

Generally.—Each of these coördinate departments has its appropriate functions, and one cannot control the action of the other, in the sphere of its constitutional power and duty. State v. Holden, 64 N. C. 829 (1870); Person v. Tax Com'rs, 184 N. C. 499, 115 S. E. 336 (1922).

This section has been said to embody succinctly the judgment of the people of North Carolina in regard to "the great principle of the separation of the powers." Long v. Watts, 183 N. C. 99, 110 S. E. 765, 22 A. L. R. 277 (1922).

From this unique political division results our elaborate system of checks and balances—a complication and refinement which repudiates all hereditary tendencies and makes the law supreme. In short, it is one of the distinct American contributions to the science of government; and the judiciary—the department of trial and judgment—of all others, without hesitation or turning, should hold fast to the basic principle upon which this government is founded. The courts are vested with judicial powers only, and it is no part of their function to change or to amend the criminal statutes enacted by the legislature. State v. Bell, 184 N. C. 701, 115 S. E. 190 (1922) (dis. op.).

The propriety of ordering sales of lands upon petition of the owner is purely a judicial duty and any private act of the General Assembly attempting to regulate the same is void under this section. Miller v. Alexander, 122 N. C. 718, 30 S. E. 125 (1898).

Where Office Created by Legislature.—It is competent for the legislature in creating an office, other than purely judicial, to reserve to itself the right to remove, or to the Governor to suspend, the incumbent of the office. Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897).

Creation of Board with Quasi-Judicial Functions.—The creation by the legislature of a board or municipal corporation and the conferring upon such board or municipal corporation quasi-judicial and administrative functions does not violate this provision. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Court Practice Regulated by Judicial Department.—Under the present Constitution, the supreme judicial power being independent of the other departments, the legislature cannot prescribe rules of practice for the Supreme Court; nevertheless, the courts have copied, almost verbatim, the provisions of the Code. Herndon v. Insurance Co., 111 N. C. 384, 16 S. E. 465 (1892); Bird v. Gilliam, 125 N. C. 76, 34 S. E. 196 (1899). And where there is conflict, the rules made by the court will be observed, Cooper v. Com'rs, 184 N. C. 615, 113 S. E. 569 (1922). However, Art. 4, § 12 of the Constitution gives to the General Assembly power to regulate proceedings in all the courts "below the Supreme Court." Horton v. Green, 104 N. C. 400, 10 S. E. 470 (1889).

The independence of the Supreme Court only (and not of the entire judicial department) is provided for by this section. But there is nothing which gives the Supreme Court supervisory control over the legislature. Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899).

The Supreme Court has the sole right to prescribe rules of practice and procedure therein. Lee v. Baird, 146 N. C. 361, 59 S. E. 876 (1907).

The rules prescribed by the Supreme Court to regulate its own procedure, including the rule as to dismissing an appeal thereto if not docketed, or a recordari prayed for in apt time, will be strictly enforced. Being under the exclusive authority therein given to the Supreme Court by the Constitution, Art. I, § 8, as distinguished from procedure applying to courts inferior thereto, Art. IV, § 2, a statute in conflict therewith will not be observed. State v. Ward, 184 N. C. 618, 113 S. E. 775 (1922).

Judicial Power as Aid to Legislative Act.—The judicial power can not be exercised in aid of an unfinished and inoperative act, so left upon the final adjournment, any more than in obstructing legislative action. State v. Robinson, 81 N. C. 409 (1879).

Power of County to Apply Formula for Ascertaining Taxable Property.—Plaintiff county ascertained the amount of personal property of defendant nonresident corporation having a "business situs" in this State, and liable for taxation as solvent credits by the county by ascertaining the total assets of the defendant and the percentage of such assets found in the county, and allowing the same per cent of its total liabilities to be deducted therefrom. Defendant complained that defendant county had made its own rule in ascertaining the solvent credits in the county subject to taxation in violation of this section, but since defendant failed to list its solvent credits for taxation as required by law, it was not prejudiced by the assessment of

its personal property for taxation as determined by the county. Mecklenburg County v. Sterchi Bros. Stores, 210 N. C. 79, 185 S. E. 454 (1936).

The creation of the Mattamuskeet Drainage District by the legislature is not violative of our Constitution. O'Neal v. Mann, 193 N. C. 153, 136 S. E. 379 (1927).

The creation by the legislature of a board or municipal corporation and the conferring upon such board or municipal corporation quasi-judicial and administrative functions does not violate this section. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

Statute authorizing the Industrial Commission to award compensation for bodily disfigurement is not unconstitutional as a void delegation of legislature power in contravention of this section. Baxter v. Arthur Co., 216 N. C. 276, 4 S. E. (2d) 621 (1939).

Cited in In re Applicants for License, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288 (1906); Bladen County Com'rs v. Boring, 175 N. C. 105, 95 S. E. 43 (1918) (con. op.); Jacobi Hardware Co. v. Jones Cotten Co., 188 N. C. 442, 124 S. E. 756 (1924); Lacy v. State, 195 N. C. 284, 141 S. E. 886 (1928); State v. Casey, 201 N. C. 620, 161 S. E. 81 (1931) (dis. op.); Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937); State v. Lawrence, 213 N. C. 674, 197 S. E. 586, 116 A. L. R. 1366 (1938); Warrenton v. Warren County, 215 N. C. 342, 2 S. E. (2d) 463 (1939) (dis. op.); Humphreys v. Churchill, 217 N. C. 530, 8 S. E. (2d) 810 (1940) (dis. op.); Myers v. United States, 272 U. S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926) (dis. op.).

§ 9. **Of the 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 to be exercised. (Const. 1868.)

§ 10. **Elections free.**—All elections ought to be free. (Const. 1868.)

Quoted in Swaringen v. Poplin, 211 N. C. 700, 191 S. E. 746 (1937).

Cited in Edgerton v. Hood, 205 N. C. 816, 172 S. E. 481 (1934).

§ 11. **In criminal prosecutions.**—In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty. (Const. 1868; 1945, c. 634, s. 1.)

Cross Reference.—As to counsel, see § 15-4 and notes.

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment substituted "person" for "man" and made other changes of phraseology.

For comment on right of confrontation, see 28 N. C. Law Rev. 205.

For article discussing the limits to confrontation, see 15 N. C. Law Rev., No. 3, p. 229.

Information as to Accusation. — This section of the Constitution does not require that the accused be informed of the charge against him in any special form or particular words, except it must be by presentment or indictment. State v. Gibson, 169 N. C. 318, 85 S. E. 7 (1915); State v. Carpenter, 173 N. C. 767, 92 S. E. 373 (1917). As to necessity for indictment, see N. C. Const., Art. I, § 12, and notes thereto.

Where a defendant convicted of a criminal offense has had sentence suspended upon condition that he appear at certain times in court and show good behavior, it is required that a judgment rendered at a later time find the facts upon which a sentence has been imposed and specify the findings of a certain criminal offense the defendant is found to have committed, in order to show that the defendant had been informed of the offense before sentence. State v. Gooding, 194 N. C. 271, 139 S. E. 436 (1927).

A charge to the jury which virtually puts the defendant upon trial for an additional offense to that named in the bill, in this case, conspiring with others than those alleged, violates the provisions of this section that "in all criminal prosecutions every man has the right to be informed of the accusation against him." State v. Mickey, 207 N. C. 608, 178 S. E. 220 (1935).

Defendants have a constitutional right of confrontation, which cannot lawfully be taken from them, and this includes the

right of a fair opportunity to face "the accusers and witnesses with other testimony." State v. Garner, 203 N. C. 361, 166 S. E. 180 (1932).

While this section gives to the accused the right to confront his accusers, such does not apply when the facts, from their very nature, can only be proved by a duly authenticated copy of a record. State v. Dowdy, 145 N. C. 432, 58 S. E. 1002 (1907).

The right guaranteed by this section does not mean that never under any circumstances shall a criminal charge be prosecuted except by the presence of living witnesses. State v. Dowdy, 145 N. C. 432, 58 S. E. 1002 (1907).

Statute which establishes a form for a bill of indictment for perjury, and enacts in express terms that this form shall be sufficient, was sufficient to apprise the defendant with reasonable certainty of the nature of the crime of which he stands charged. State v. Harris, 145 N. C. 456, 59 S. E. 115 (1907).

An indictment which failed to show the causal relation between the alleged false pretense and the deceit, was held not to inform defendant of the crime charged against him. It is his constitutional right to be so informed. State v. Whedbee, 152 N. C. 770, 67 S. E. 60, 27 L. R. A. (N. S.) 363 (1910).

In State v. Hightower, 187 N. C. 300, 121 S. E. 616 (1924), it was said: "In all criminal prosecutions the defendant is clothed with a constitutional right of confrontation, and this may not be taken away any more by denying him the right to cross-examine the state's witnesses than by refusing him the right to confront his accusers and witnesses with other testimony. Constitution, Art. I, § 11 [this section]. 'We take it that the word confront does not simply secure to the accused the privilege of examining witnesses in his behalf, but is an affirmance of the rule of the common law that in trials by jury the witness must be present before the jury and accused, so that he may be confronted; that is, put face to face'—Pearson, C. J., in State v. Thomas, 64 N. C. 74 (1870). And this, of course, includes the right of cross-examination." State v. Moss, 47 N. C. 66 (1854); State v. Harris, 181 N. C. 600, 107 S. E. 466 (1921); State v. Maynard, 184 N. C. 653, 113 S. E. 682 (1922); State v. Snipes, 185 N. C. 743, 117 S. E. 500 (1923); State v. Hartsfield, 188 N. C. 357, 124 S. E. 629 (1924).

The principle upon which dying declarations may be received in evidence in criminal cases is not in violation of the defendant's constitutional right to confront his accusers, as they have been admitted from necessity. State v. Williams, 185 N. C. 643, 116 S. E. 570 (1923).

Confrontation—Definition.—In State v. Thomas, 64 N. C. 74 (1870), it is said that the word "confront" as used in this section does not simply secure to the accused the privilege of examining witnesses in his behalf, but is an affirmance of the common-law rule that in trials by jury the witness must be present before the jury and the accused, so that he may be confronted, that is put face to face. It extends also to the right to require the witnesses to be placed under oath, subject to the test of a competent cross-examination. State v. Dixon, 185 N. C. 727, 119 S. E. 170 (1923). See also State v. Breece, 206 N. C. 92, 173 S. E. 9 (1934).

Under this construction it is held that entries in the course of business, upon the books of a railroad company by one at the time an agent of the company, and still living, but absent from the State, are not competent evidence of the facts therein set forth, upon the trial of a third person for crime. State v. Thomas, 64 N. C. 74 (1870).

By construing this section, which gives the accused the right to be confronted by witnesses, with the right to be present at the trial, the conclusion reached in this State is that the prisoner does not have to accompany the jury when it views the scene of the crime. Apparently the right to accompany the jury has never been raised in this State. 12 N. C. Law Rev. 268.

Same—Does Not Apply to Civil Actions.—The right accorded defendant in a criminal prosecution to confront the witnesses against him does not apply to civil actions. Chesson v. Kieckhefer Container Co., 223 N. C. 378, 26 S. E. (2d) 904 (1943).

Same—Deposition. — Depositions taken in the absence of a criminal cannot be read against him. State v. Webb, 2 N. C. 103 (1794).

Same—Waiver of Right.—The accused has the right to insist upon the production of his accusers but this is a right which may be and is waived by a failure to assert it in proper time. The right must be insisted upon in express terms and a general objection to the evidence is not sufficient. State v. Mitchell, 119 N. C. 784, 25 S. E. 783, 1020 (1896).

Same—Not Denied by Refusing Motion to Continue.—There is no denial of prisoner's right to confrontation by the refusal of a motion to continue, on the ground of the absence of a material, ex-

pert, fingerprint witness, it appearing that the State's solicitor agreed that he would not, and did not offer evidence as to fingerprints. State v. Rising, 223 N. C. 747, 28 S. E. (2d) 221 (1943).

The denial of a continuance is not prejudicial error where the record fails to show that it would have enabled defendant and his counsel to obtain additional evidence or otherwise present a stronger defense. State v. Gibson, 229 N. C. 497, 50 S. E. (2d) 520 (1948).

The right of a defendant to confront his accusers includes the right to cross-examine them on any subject touched on in their examination-in-chief, and a witness testifying to facts incriminating defendant on his examination-in-chief may not deprive defendant of his right to cross-examine him on the ground that answers to questions asked on cross-examination might tend to incriminate the witness. State v. Perry, 210 N. C. 796, 188 S. E. 639 (1936).

The constitutional right to be represented by counsel is further implemented by § 15-4. State v. Chesson, 228 N. C. 259, 45 S. E. (2d) 563 (1947).

A defendant has the constitutional right to be represented by counsel whom he has selected and employed, and in prosecutions for capital felonies the court has an inescapable duty to assign counsel to a person unable to employ one. State v. Gibson, 229 N. C. 497, 50 S. E. (2d) 520 (1948).

Depends upon Nature of Offense. — In capital felonies the provision relative to counsel is regarded as not merely permissive but mandatory. This is indicated by § 15-5 and by numerous decisions of the Supreme Court. But in cases of misdemeanors and felonies less than capital it has been the uniform practice in this jurisdiction to regard these provisions as guaranteeing the right of persons accused to be represented by counsel, and the right to have counsel assigned if requested and the circumstances are such, for financial or other reasons, as to show the apparent necessity of counsel for the protection of the defendant's rights. State v. Chesson, 228 N. C. 259, 45 S. E. (2d) 563 (1947).

In cases less than capital the propriety of providing counsel depends upon the circumstances of the individual case, within the sound discretion of the trial judge. State v. Chesson, 228 N. C. 259, 45 S. E. (2d) 563 (1947).

And defendant's ignorance and unfamiliarity with legal matters are not alone sufficient to render appointment of counsel mandatory in a prosecution for less than a capital offense. State v. Chesson, 228 N. C. 259, 45 S. E. (2d) 563 (1947).

Self-Incrimination—Scope of Protection.—The fair interpretation of the clause that the defendant "shall not be compelled to give evidence against himself" seems to be to secure one who is or may be accused of crime from making any compulsory revelations which may be given in evidence against him on his trial for the offense. LaFontaine v. Southern Underwriter's, 83 N. C. 133 (1880).

The constitutional inhibition against self-incrimination is directed against compulsion, and not against voluntary admissions, confessions, or testimony freely given on the trial. Such statements, confessions, and testimony voluntarily given on a former trial are received against the accused as his admissions. State v. Farrell, 223 N. C. 804, 28 S. E. (2d) 560 (1944).

This immunity extends, not only to one who actually testifies as a witness, but to the defendant in the trial, even though he decline to testify as a witness in his own behalf. State v. Hollingsworth, 191 N. C. 595, 132 S. E. 667 (1926).

Whenever the defendant in a criminal action voluntarily testifies in his own defense he assumes the position of a witness and subjects himself to all the disadvantages of that position. In doing so he acknowledges the right of the prosecution to test his credibility and he waives his constitutional privilege not to answer questions which tend to incriminate him or to prove the specific offense with which he is charged. State v. O'Neal, 187 N. C. 22, 120 S. E. 817 (1924).

In Smith v. Smith, 116 N. C. 386, 21 S. E. 196 (1895), it was held that the true intent and meaning of this article is that a witness shall not be compelled to answer any question, the answer to which would disclose a fact which forms an essential link in the chain of testimony which would be sufficient to convict him of a crime. And Chief Justice Faircloth, delivering the opinion, said: "We think the provision of our Constitution ought to be liberally construed to preserve personal rights and protect the citizen against self-incriminating evidence." State v. Medley, 178 N. C. 710, 100 S. E. 591 (1919).

Testimony that defendant was placed for identification in the relative position to a witness as the perpetrator was seen by her just before committing a criminal offense is not objectionable as forcing defendant to give evidence against himself in denial of his constitutional rights. State

v. Neville, 175 N. C. 731, 95 S. E. 55 (1918).

As to witness testifying to any unlawful gaming done by himself or others, see § 8-55 and note thereto.

Same—Truth or Falsity of Statements.—The constitutional privilege against self-incrimination, however, bars the introduction of all statements falling within its scope without regard for their truth or falsity. State v. Rogers, 233 N. C. 390, 64 S. E. (2d) 572 (1951).

Same — Evidential Circumstances on Accused's Body, etc.—The scope of the privilege against self-incrimination includes only the process of testifying by word of mouth or in writing. It has no application to such physical, evidential circumstances as may exist on the accused's body or about his person. State v. Rogers, 233 N. C. 390, 64 S. E. (2d) 572 (1951).

Upon the trial of the defendant for violating the prohibition law the introduction in evidence of testimony of the officer making the arrest that he found a half-gallon jar of liquor on the person of the defendant is competent, and is not in violation of the constitutional provision that a defendant may not be compelled to give evidence against himself, the provision not applying to physical facts or conditions. State v. Hickey, 198 N. C. 45, 150 S. E. 615 (1929).

The constitutional guarantee that a defendant shall not be compelled to testify against himself, as provided by this section, does not preclude testimony by a witness as to marks on defendant's body tending to identify him as the perpetrator of the crime. State v. Riddle, 205 N. C. 591, 172 S. E. 400 (1934).

The admission of incriminating testimony of defendant's physical condition by witnesses who examined her without objection does not violate defendant's constitutional right not to be compelled to give evidence against herself, as provided in this section. State v. Eccles, 205 N. C. 825, 172 S. E. 415 (1934).

Same—Examination of Blood of Accused.—Where defendant pleaded insanity at the time of the homicide due to the continued use of liquor and opiates, and the record failed to show any compulsion on the part of the officers in obtaining specimens of defendant's blood and urine in order to ascertain the presence or absence of alcohol or morphine in his system, it was held that defendant's contention that the obtaining of the specimens compelled him to give evidence against himself, in violation of this section, was untenable. State v. Cash, 219 N. C. 818, 15 S. E. (2d) 277 (1941).

Same—Chemical Tests.—For note on self-incrimination and the use of chemical tests to determine intoxication, see 30 N. C. Law Rev. 302.

Same—Evidence of Footprints. — The constitutional privilege against self-incrimination is not violated by the introduction of evidence of footprints to identify the accused, even where these are obtained by coercion. State v. Rogers, 233 N. C. 390, 64 S. E. (2d) 572 (1951).

Same—Demonstration of Act of Killing.—Upon trial for murder in the first degree when there is other circumstantial evidence of the prisoner's guilt, it is not duress to require the prisoner to place himself in such position as to show he could have fired the fatal shot from a window and killed the deceased, as this is not considered as making a person furnish evidence against himself, it being dependent upon physical facts and conditions and not upon confessions or statements of the prisoner. State v. Thompson, 161 N. C. 238, 76 S. E. 249 (1912).

Same—Forced Production of Incriminating Documents Not Allowed. — The protection afforded to defendants in criminal action by this section is a matter of absolute right to them, and extends to the forced production of letters and other papers in their possession that may tend to incriminate them upon the trial. State v. Hollingsworth, 191 N. C. 595, 132 S. E. 667 (1926).

The introduction in evidence of incriminating papers taken from the defendant at the time of the arrest does not infringe the constitutional guarantee against self-incrimination, under this section, and when he takes the stand in his own behalf he waives his constitutional right against self-incrimination. State v. Shoup, 226 N. C. 69, 36 S. E. (2d) 697 (1946), distinguishing State v. Hollingsworth, 191 N. C. 595, 132 S. E. 667 (1926).

Same—Waiver of Privilege. — The defendant waives his constitutional privilege not to answer questions tending to incriminate himself when he voluntarily testifies in his own behalf. State v. Allen, 107 N. C. 805, 11 S. E. 1016 (1890).

Same—Defendant Voluntarily Taking Stand.—See § 8-54 and notes thereto.

As to compelling accused to speak so that witness may identify his voice, see note, 27 N. C. Law Rev. 262.

Accomplice Can Not Refuse to Answer on Cross-Examination after Incriminating Defendant.—An accomplice may not testify on direct examination to facts tend-

ing to incriminate defendant and at the same time refuse to answer questions on cross-examination relating to matters embraced in his examination-in-chief, and where he refuses to answer relevant questions on cross-examination on the ground that his answers might tend to incriminate him, it is error for the court to refuse defendant's motion that his testimony-in-chief be stricken from the record, the refusal to answer the questions on cross-examination rendering the testimony-in-chief incompetent. State v. Perry, 210 N. C. 796, 188 S. E. 639 (1936).

Must Have Opportunity to Prepare and Present Defense.—The constitutional right of a defendant in a criminal prosecution to confront his accusers and adverse witnesses with other testimony, as provided by this section, includes the right to a fair opportunity to prepare and present his defenses, which right must be accorded him not only in form, but in substance as well. State v. Whitfield, 206 N. C. 696, 175 S. E. 93 (1934); State v. Utley, 223 N. C. 39, 25 S. E. (2d) 195 (1943); State v. Gibson, 229 N. C. 497, 50 S. E. (2d) 520 (1948), discussed in 27 N. C. Law Rev. 544; State v. Speller, 230 N. C. 345, 53 S. E. (2d) 294 (1949).

After the convening of the term the trial court ordered a special venire from another county to try a negro charged with rape. Counsel for defendant challenged the array on the ground that persons of defendant's race had been excluded from the jury list solely because of their race, and the court refused the request of counsel for time to investigate and secure evidence in support of such challenge to the array, but counsel obtained evidence from members of the special venire and bystanders of the courtroom tending to sustain the challenge. It was held that as it appeared that defendant was prejudiced by denial of reasonable opportunity to procure evidence in support of his challenge to the array, a new trial was awarded for the denial of defendant's constitutional right to be properly represented by counsel. State v. Speller, 230 N. C. 345, 53 S. E. (2d) 294 (1949).

Arrest and Search of Person Suspected of Carrying Intoxicants. — Where an officer sees a person leave his automobile with his appearance indicating that he had something concealed on his person and reasonably giving the impression that the person was carrying intoxicating liquor, the officer may immediately arrest and search such person, and where a half-gallon of liquor is found on the person of the defendant the action of the officer does not violate the provisions of this section. State v. Hickey, 198 N. C. 45, 150 S. E. 615 (1929).

Payment of Witnesses' Fees Not Placed on Public.—This provision, exempting an acquitted defendant from payment of necessary witness fees of the defense, does not require that they shall be paid by the public; the section operates only to deprive the witnesses of their common-law right to look to the defendant for payment. State v. Hicks, 124 N. C. 829, 32 S. E. 957 (1899).

Private Counsel May Assist Solicitor in Trial of Case.—The trial court has discretionary power to allow private counsel to assist the solicitor in the trial of a case, it being the duty of the court to permit only such assistance as fairness and justice may require, and such power does not impinge the provisions of this section of the Constitution. State v. Carden, 209 N. C. 404, 183 S. E. 898 (1936).

When Motion for Continuance Presents Question of Law. — When a motion for continuance, in a criminal case, is based on a right guaranteed by the federal and State Constitutions, 14th Amend. U. S. Constitution, Art. I, § 17 and this section, the question presented is one of law and not of discretion, and the decision of the court below is reviewable. State v. Farrell, 223 N. C. 321, 26 S. E. (2d) 322 (1943).

Cited in State v. Wadford, 194 N. C. 336, 139 S. E. 608 (1927); State v. Goff, 205 N. C. 545, 172 S. E. 407 (1934); State v. White, 225 N. C. 351, 34 S. E. (2d) 139 (1945).

§ **12. Answers to criminal charges.**—No person shall be put to answer any criminal charge except as hereinafter allowed, but by indictment, presentment, or impeachment, but any person, when represented by counsel, may, under such regulations as the Legislature shall prescribe, waive indictment in all except capital cases. (Const. 1868; 1949, c. 579.)

Editor's Note. — This section was amended by vote at the general election of November 7, 1950. The amendment added the provision as to waiver of indictment.

For the history of section, see State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Generally. — The words "except as hereinafter allowed" have reference to the last clause of § 13, and are intended to harmonize the two sections and let both

operate. State v. Crook, 91 N. C. 536 (1884). See State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

These principles are dear to every free man; they are his shield and buckler against wrong and oppression, and lie at the foundation of civil liberty; they are declared to be the rights of the citizens of North Carolina and ought to be vigilantly guarded. State v. Moss, 47 N. C. 66 (1854); State v. Snipes, 185 N. C. 743, 117 S. E. 500 (1923).

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 § 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 (1932). See State v. Clegg, 214 N. C. 675, 200 S. E. 371 (1939).

Scope.—This section means action by the grand jury according to the practice at common law, and does not permit open hearings before the grand jury, and where the court sends for the grand jury and permits the solicitor to examine a State's witness in open court before the grand jury, after the grand jury had returned two identical bills of indictment against the defendant, submitted on successive days, "not a true bill," and thereafter the solicitor submits another identical bill to the grand jury which is returned "a true bill": Held, the defendant's verified plea in abatement and motion to quash, made before pleading, should have been allowed, and upon appeal from the court's denial of the motion the judgment will be reversed, with leave to the solicitor to send another bill before a different grand jury, if so advised. State v. Ledford, 203 N. C. 724, 166 S. E. 917 (1932).

The word "indictment" means indictment by a grand jury as defined by the common law. State v. Mitchell, 202 N. C. 439, 163 S. E. 581 (1932).

The term "indictment" is used in this section to signify a written accusation of a crime drawn up by the public prosecuting attorney and submitted to the grand jury, and by them found and presented on oath or affirmation as a true bill. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Presentments.—The term "presentment" is used in this constitutional provision to denote an accusation made, ex mero motu, by a grand jury of an offense upon their own knowledge or observation, or upon information from others, without any bill of indictment having been submitted to them by the public prosecuting attorney. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Since the enactment of G. S. 15-137 trials upon presentment have been abolished and a presentment amounts to nothing more than an instruction by the grand jury to the public prosecuting attorney to frame a bill of indictment. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

This section sufficiently explains the function of the grand jury as a part of the court. It is competent to send to the grand jury as many bills of indictment as may be necessary to get before them necessary witnesses and evidence from which they may decide the propriety of submitting the accused to trial. State v. Lewis, 226 N. C. 249, 37 S. E. (2d) 691 (1946).

Necessity for Order for Grand Jury During Special Term.—Where defendant is tried at a special term of criminal court upon an indictment returned by a grand jury drawn for the special term, but there is no order by the Governor that a grand jury be drawn for such term, as provided by § 7-78, defendant's motion in arrest of judgment, made the first time in the Supreme Court upon appeal, must be allowed, pursuant to this section. State v. Baxter, 208 N. C. 90, 179 S. E. 450 (1935). See State v. Boykin, 211 N. C. 407, 191 S. E. 18 (1937).

Capital Felonies. — A person charged with a capital felony can be prosecuted only on an indictment found by a grand jury. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Noncapital Felonies and Misdemeanors. —A person charged with a noncapital felony or with a misdemeanor may be tried initially in the superior court only upon an indictment, except when represented by counsel he may be tried upon information signed by the solicitor when written waiver of indictment by defendant and his counsel appears on the face of the information as provided in G. S. 15-140 and 15-140.1. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

The provisions of this and the following section, when read together, empower the legislature to provide means other than indictments by grand juries for the trial of petty misdemeanors, with the right of appeal. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Effect of Invalid Indictment. — When the indictment charging defendant with

the commission of crime is invalid, defendant's motion to dismiss the action for want of jurisdiction should be allowed. State v. Beasley, 208 N. C. 318, 180 S. E. 598 (1935).

Indictment on Appeal. — See State v. Pulliam, 184 N. C. 681, 114 S. E. 394 (1922). See also, State v. Hyman, 164 N. C. 411, 79 S. E. 284 (1913).

Trial in Superior Court upon Original Accusation.—Where the General Assembly declares an offense below the grade of felony to be a petty misdemeanor and provides for prosecution of such offense in an inferior court upon accusation other than indictment, and confers upon such inferior court final jurisdiction of such prosecutions subject to the right of appeal to the superior court, the defendant on appeal from conviction in the inferior court may be tried in the superior court upon the original accusation without an indictment; but when there has been no trial in the inferior court and the prosecution has been merely transferred to the superior court upon defendant's demand for jury trial, trial in the superior court upon the original warrant is a nullity, and a statute providing for such trial is unconstitutional. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Applied in State v. Rawls, 203 N. C. 436, 166 S. E. 332 (1932); State v. Watson, 209 N. C. 229, 183 S. E. 286 (1936).

Stated in State v. Johnson, 220 N. C. 773, 18 S. E. (2d) 358 (1942) (dis. op.); State v. Shine, 222 N. C. 237, 22 S. E. (2d) 447 (1942).

§ **13. Right of jury.**—No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal. (Const. 1868; 1945, c. 634, s. 1.)

Cross Reference. — For general provisions as to jurors, see § 9-1 et seq.

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment substituted "lawful persons" for "lawful men."

The essential attributes of trial by jury guaranteed by this section, are the number of jurors, their impartiality and a unanimous verdict, and § 9-21, providing that the court may order the selection of an alternate juror in those cases which seem likely to be protracted, does not infringe upon this constitutional provision. State v. Dalton, 206 N. C. 507, 174 S. E. 422 (1934).

The word "jury" as here used formerly signified a body of twelve men in a court of justice duly selected and impaneled in the case to be tried. A jury of ten men and two women did not suffice as a jury of "good and lawful men" within the meaning of this section as it formerly read. State v. Emery, 224 N. C. 581, 31 S. E. (2d) 858 (1944).

Unanimous Verdict Required. — A verdict of guilty rendered by a less number than twelve is unconstitutional. State v. Berry, 190 N. C. 363, 130 S. E. 12 (1925). The verdict must be rendered in open court before the presiding judge. State v. Bazemore, 193 N. C. 336, 137 S. E. 172 (1927).

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, 163 S. E. 877 (1932).

Poll of Jury.—The predominant purpose of the poll is to ascertain if the verdict as tendered by the jury is the "unanimous verdict of a jury of good and lawful men [now lawful persons] in open court," as prescribed by this section. Lipscomb v. Cox, 195 N. C. 502, 142 S. E. 779 (1928). See Art. I, § 19.

See notes to § 1-201.

Jury Trial Preserved on Appeal.—The right of a trial by jury in a criminal action is preserved to the accused by the statutory requirement of a trial de novo in the superior court on appeal from a court of subordinate jurisdiction, and conviction in the superior court cannot be had unless upon the verdict of the jury, in accordance with the provisions of this section of our Constitution. State v. Pulliam, 184 N. C. 681, 114 S. E. 394 (1922).

Jury Trial Not Waivable.—A jury trial cannot be waived in a criminal action; hence where the facts were agreed upon by the State and the accused and submitted to the judge for his decision, it was held, that such a procedure is not warranted by the law. State v. Holt, 90 N. C. 749 (1884). The only exception being for the trial of petty misdemeanors. State v. Stewart, 89 N. C. 563 (1883). As to waiver in civil cases, see § 1-184 and notes thereto.

Jury Trial Can Not Be Waived after

Plea of Not Guilty. — A defendant in a criminal prosecution for a felony or a misdemeanor may not waive his constitutional right to trial by jury in the superior court after entering a plea of "not guilty", without changing his plea, nor may the General Assembly permit him to do so by statute, and where the court, after a plea of "not guilty," finds the defendant guilty without a jury trial, the judgment will be stricken out and the cause remanded. State v. Hill, 209 N. C. 53, 182 S. E. 716 (1935). See also, State v. Muse, 219 N. C. 226, 13 S. E. (2d) 229 (1941).

When a defendant in a criminal prosecution in the superior court enters a plea of not guilty he may not, without changing his plea, waive his constitutional right of trial by jury, and the determinative facts cannot be referred to the decision of the court even by consent, but must be found by the jury. State v. Muse, 219 N. C. 226, 13 S. E. (2d) 229 (1941).

Failure of defendant in a criminal prosecution to exhaust his peremptory challenges does not affect his right to attack an illegally constituted jury. State v. Emery, 224 N. C. 581, 31 S. E. (2d) 858 (1944).

Miscellaneous Cases.—The North Carolina Workmen's Compensation Act was held not to be unconstitutional for that it impaired the right of trial by jury, guaranteed by this section. Hanks v. Southern Public Utilities Co., 204 N. C. 155, 167 S. E. 560 (1933).

For case of emergency, such as illness of juror, see State v. Wheeler, 185 N. C. 670, 116 S. E. 413 (1923); denial of partnership, see Woodland & Co. v. Southgate Packing Co., 186 N. C. 116, 118 S. E. 898 (1923).

Assault and battery is not a petty misdemeanor within the proviso to this section. State v. Stewart, 89 N. C. 563 (1883); Schick v. United States, 195 U. S. 65, 24 S. Ct. 826, 49 L. Ed. 99 (1904).

The recorders' courts are not in violation of the right of trial by jury guaranteed by this section. Jones v. Brinkley, 174 N. C. 23, 93 S. E. 372 (1917), citing State v. Shine, 149 N. C. 480, 62 S. E. 1080 (1908); State v. Doster, 157 N. C. 634, 73 S. E. 111 (1911); State v. Dunlap, 159 N. C. 491, 74 S. E. 626 (1912). See also, State v. Rogers, 162 N. C. 656, 78 S. E. 293, 6 L. R. A. (N. S.) 38, Ann. Cas. 1914A, 867 (1913).

Separate Provisions for Petty Misdemeanors.—The very purpose of conferring on the legislature power to provide means of trial other than by jury in the ordinary way, as to petty misdemeanors, is to avoid the inconvenience, expense and delay attendant upon indictment by the grand jury, the trial by the jury where the parties choose to waive it, in the ordinary course of criminal procedure. State v. Crook, 91 N. C. 536 (1884). See State v. Boykin, 211 N. C. 407, 191 S. E. 18 (1937).

The legislature has power to designate the unlawful possession and transportation of intoxicants a petty misdemeanor and to provide means of trial for the offense other than by indictment and trial by jury. State v. Shine, 222 N. C. 237, 22 S. E. (2d) 447 (1942).

Under this section indictment by grand jury is dispensed with in the trial of petty misdemeanors. State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905).

The provisions of this section empower the legislature to provide means other than petit juries for the trial of petty misdemeanors, with the right of appeal. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Same—Right of Appeal.—The right of appeal mentioned in the last clause of this section must be with the right in the party to appeal to the Supreme Court, and with power and jurisdiction in that court to review the decision of the court below in matters of law. State v. Ham, 83 N. C. 590 (1880).

The constitutional guaranty of a jury trial is met by the right of appeal which is given from the police court, in all cases, to the superior court. State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905). And this is true where the appeal is from a recorder's court. State v. Hyman, 164 N. C. 411, 79 S. E. 284 (1913).

In disbarment proceedings respondent's exception on the ground that the proceedings deprived him of his right to trial by jury is untenable when the matters in issue are determined by a jury upon his appeal to the superior court. In re West, 212 N. C. 189, 193 S. E. 134 (1937). As to right on appeal from criminal case charging misdemeanor, see State v. Wheeler, 185 N. C. 670, 116 S. E. 413 (1923).

Upon defendant's appeal from judgment and sentence by the court after defendant had entered a conditional plea of guilty the case will be remanded in order that a jury may pass upon defendant's guilt or innocence in accordance with defendant's constitutional right. State v. Ellis, 210 N. C. 170, 185 S. E. 662 (1936).

Where a defendant enters a plea of "not guilty" in the superior court, he may not thereafter, without being permitted to change his plea, waive his constitutional right of trial by jury. State v. Rogers, 162

N. C. 656, 78 S. E. 293, 46 L. R. A. (N. S.) 38, Ann. Cas. 1914A, 867 (1913). And this applies to misdemeanors as well as to the more serious offenses. State v. Pulliam, 184 N. C. 681, 114 S. E. 394 (1922). The reason for such holding is to be found in the language of this section. State v. Hartsfield, 188 N. C. 357, 124 S. E. 629 (1924).

Same—Waiver of Right.—A person on trial for a misdemeanor in a municipal court with right of appeal to the superior court, may waive his constitutional right to a trial by jury by consenting to the judgment therein entered, or by not appealing therefrom, and his afterwards employing an attorney and moving for the appeal within the time allowed by the statute applicable will not affect the fact that he had personally acquiesced in the judgment entered. State v. Pasley, 180 N. C. 695, 104 S. E. 533 (1920); State v. Lakey, 191 N. C. 571, 132 S. E. 570 (1926).

It is permissible under this section for the General Assembly to provide for the trial of petty misdemeanors in inferior courts with the right of appeal to the superior court. State v. Camby, 209 N. C. 50, 182 S. E. 715 (1935), citing State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905); State v. Brittain, 143 N. C. 668, 57 S. E. 352 (1907); State v. Hyman, 164 N. C. 411, 79 S. E. 284 (1913); State v. Tate, 169 N. C. 373, 85 S. E. 383 (1915); State v. Pasley, 180 N. C. 695, 104 S. E. 533 (1920).

Statutes purporting to authorize the transfer of untried misdemeanor cases from an inferior court to the superior court and the initial trial of such transferred cases in the superior court upon the warrant of the inferior court are repugnant to the declaration plainly inherent in the second sentence of this section that a person charged with the commission of a misdemeanor cannot be put on trial in the superior court upon the warrant of an inferior court unless he has been tried upon such warrant in the inferior court and has appealed from that court to the superior court. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

Applied in State v. Watson, 209 N. C. 229, 183 S. E. 286 (1936).

Cited in Gregory v. Travelers Ins. Co., 223 N. C. 124, 25 S. E. (2d) 398, 147 A. L. R. 283 (1943) (con. op.); State v. Crandall, 225 N. C. 148, 33 S. E. (2d) 861 (1945) (dis. op.); State v. White, 225 N. C. 351, 34 S. E. (2d) 139 (1945).

§ **14. Excessive bail.**—Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. (Const. 1868.)

Cross References.—See annotations under § 14-3.

For general provisions as to bail, see § 15-102 et seq.

For article on punishment for crime in North Carolina, see 17 N. C. Law Rev. 205.

In General. — This section restricts the judiciary from imposing excessive punishments where the legislature has not prescribed a fixed maximum, and does not apply to the legislative power to impose the penalty for acts made an offense by them. State v. Blake, 157 N. C. 608, 72 S. E. 1080 (1911).

Bail—Test as to Reasonableness.—There are two things which have been looked upon as very good guides in determining the reasonableness of punishment; (1) what has formerly been expressly done in like cases, and (2) for the want of such particular discretion then to consider that which comes nearest to it. State v. Driver, 78 N. C. 423 (1878).

It ought to be left to the judge who inflicts it under the circumstances of each case, and it ought not to be interfered with, except when the abuse is palpable. State v. Driver, 78 N. C. 423 (1878), approved in State v. Reid, 106 N. C. 714, 11 S. E. 315 (1890).

It is well settled that when no time is fixed by the statute, an imprisonment for two years will not be held cruel and unusual. State v. Farrington, 141 N. C. 844, 53 S. E. 954 (1906), citing State v. Driver, 78 N. C. 423 (1878); State v. Miller, 94 N. C. 904 (1886).

Cruel and Unusual Punishment.—This section has been considered by the Supreme Court as an admonition to the judiciary in imposing sentence left to an extent within its discretion by the statutes, however, there is a decided intimation that in extraordinary and exceptional cases it may be held to affect legislative enactments as well. State v. Smith, 174 N. C. 804, 93 S. E. 910 (1917).

Where the question of punishment is left to the sound discretion of the court, the court is limited only by the prohibition against cruel or unusual punishment in this section. State v. Richardson, 221 N. C. 209, 19 S. E. (2d) 863 (1942).

A punishment which is within the limits authorized by statute cannot be held cruel or unusual in the constitutional sense. State v. Welch, 232 N. C. 77, 59 S. E. (2d) 199 (1950).

A sentence which finds complete sanc-

tion in a valid legislative enactment cannot be deemed violative of this constitutional provision forbidding the infliction of cruel or unusual punishments. State v. Stansbury, 230 N. C. 589, 55 S. E. (2d) 185 (1949).

It is well settled that when no time is fixed by statute, this court will not hold imprisonment for two years cruel and unusual. State v. Moschoures, 214 N. C. 321, 199 S. E. 92 (1938); State v. Crandall, 225 N. C. 148, 33 S. E. (2d) 861 (1945).

A sentence to 18 months labor on the roads entered upon defendant's plea of guilty to a charge of drawing and uttering a worthless check was held not to be "cruel and unusual" in a constitutional sense. State v. White, 230 N. C. 513, 53 S. E. (2d) 436 (1949).

Defendant's contention that he was subjected to cruel and unusual punishment in that the trial court sentenced him to the maximum prison term permitted by statute for the offense of seduction of which he was convicted, and in addition dictated a letter to the parole commissioner in which he requested that no clemency be extended defendant, and also directed the solicitor to institute prosecution against defendant for failure to support his illegitimate child, is untenable, since the letter to the parole commissioner and the instructions to the solicitor are not parts of the sentence imposed. State v. Brackett, 218 N. C. 369, 11 S. E. (2d) 146 (1940).

Same—Punishment for Two Offenses.—Where there is a conviction of the violation of two separate criminal statutes consolidated and tried as two counts under one bill of indictment, a sentence for each offense—the one to begin upon the expiration of the other term—confining the punishment as to each within that prescribed in the statute relating to it, cannot be considered under the facts of the case as cruel and unusual within the inhibition of this section. State v. Malpass, 189 N. C. 349, 127 S. E. 248 (1925).

Miscellaneous Cases.—A sentence of not less than twenty-five nor more than thirty years in the State's prison, upon a plea of guilty of possession of weapons and implements for house breaking, State v. Cain, 209 N. C. 275, 183 S. E. 300 (1936). Sentence of hard labor for thirty years upon conviction of a male person for carnally knowing a female child thirteen years of age, State v. Swindell, 189 N. C. 151, 126 S. E. 417 (1925).

Upon conviction of manslaughter, punishment for nine years in the penitentiary, State v. Lance, 149 N. C. 551, 63 S. E. 198 (1908).

The punishment for vagrancy cannot exceed thirty days under our statute. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911). Fine or imprisonment for the owners of bird dogs to permit them to run at large during the closed season for quail, State v. Blake, 157 N. C. 608, 72 S. E. 1080 (1911). Punishment of thirty days confinement in jail for carrying concealed weapons, State v. Woodlief, 172 N. C. 885, 90 S. E. 137 (1916). See also, State v. Mangum, 187 N. C. 477, 121 S. E. 765 (1924).

Cruel and Unusual Punishment—Violation of Prohibition Law.—A sentence prescribed by statute for the violation of prohibition law is held not to be cruel or unusual within the meaning of this section. State v. Daniels, 197 N. C. 285, 148 S. E. 244 (1929).

Cited in State v. Parker, 220 N. C. 416, 17 S. E. (2d) 475 (1941).

§ 15. General warrants.—General warrants, whereby any officer or messenger 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. (Const. 1868.)

Cross Reference.—See § 15-26.

Editor's Note.—For a discussion of the statute enacted pursuant to this provision, see 15 N. C. Law Rev., No. 2, p. 101. As to limitations on investigating officers, see 15 N. C. Law Rev., No. 3, p. 229.

This provision is a limitation on State and local officers. 15 N. C. Law Rev., No. 3, p. 232.

Judicial warrants, general in terms and unsupported by preliminary oath or sworn evidence and for conduct not committed in the immediate presence of the magistrate, are forbidden by the federal Constitution, Amendment IV, and by this section. Brewer v. Wynne, 163 N. C. 319, 79 S. E. 629, Ann. Cas. 1915B, 319 (1913).

Ordinarily even the strong arm of the law may not invade one's dwelling except under authority of a proper search warrant. In re Walters, 229 N. C. 111, 47 S. E. (2d) 709 (1948).

A warrant must sufficiently identify the person accused. Carson v. Doggett, 231 N. C. 629, 58 S. E. (2d) 609 (1950).

The provisions of the Turlington Act,

Public Laws of 1923, did not contravene the provisions of this section. State v. Godette, 188 N. C. 497, 125 S. E. 24 (1924).

Cited in State v. Fowler, 172 N. C. 905, 90 S. E. 408 (1916); State v. Campbell, 182 N. C. 911, 110 S. E. 86 (1921); Rhodes v. Collins, 198 N. C. 23, 150 S. E. 492 (1929).

§ 16. Imprisonment for debt.—There shall be no imprisonment for debt in this State, except in cases of fraud. (Const. 1868.)

Cross Reference. — See § 1-410 and the notes thereto.

What Constitutes Debt.—A fine or penalty imposed by a municipal ordinance is treated as a debt and, under this section of the Constitution, a person from whom it is attempted to be collected is exempt from arrest. State v. Earnhardt, 107 N. C. 789, 12 S. E. 426 (1890). A judgment on a note is likewise a debt and the defendant cannot be arrested therefor. Stewart v. Bryan, 121 N. C. 46, 28 S. E. 18 (1897).

But costs of prosecution against a prosecutor (upon acquittal of the accused or nolle prosequi entered), or against the accused upon a verdict of guilty, or a fine imposed, does not constitute a debt within the meaning of this section of the Constitution, and hence the defendant may be imprisoned for non-payment of the same. State v. Wallin, 89 N. C. 578 (1883). See section 6-45. Nor is the duty of maintaining a bastard child imposed upon the father such a debt as is contemplated by this section. State v. Palin, 63 N. C. 472 (1869), approved in State v. Beasley, 75 N. C. 211 (1876).

No Imprisonment Except Where There Is Fraud. — "This section clearly means that there shall at least be no imprisonment to enforce the payment of a debt under final process, unless it has been adjudged, upon an allegation duly made in the complaint and a corresponding issue found by a jury, that there has been fraud. . . .' East Coast Fertilizer Co. v. Hardee, 211 N. C. 653, 191 S. E. 725 (1937), quoting from Ledford v. Emerson, 143 N. C. 527, 55 S. E. 969, 10 L. R. A. (N. S.) 362 (1906).

The words "except in cases of fraud," in this section of the Constitution, comprehend not only fraud in attempting to hinder, delay and defeat the collection of a debt by concealing property and other fraudulent devises, but embraces also fraud in making the contract — false representations for instance, and fraud in incurring the liability; for instance, when an administrator commits a fraud by applying the funds of the estate to his own use, paying his own debts, and the like. Melvin v. Melvin, 72 N. C. 384 (1875). See further for arrests in cases of fraud, section 1-410, par. 4, and notes thereto.

Imprisonment for failure to pay a sum of money is prohibited except to enforce an appropriate judicial order which has been willfully disobeyed so as to constitute contempt of court. Stanley v. Stanley, 226 N. C. 129, 37 S. E. (2d) 118 (1946).

Not Applicable to Tort Actions. — The provision of this section of the Constitution has no application to actions for tort; it is confined to causes of action arising ex contractu. Long v. McLean, 88 N. C. 3 (1883). See Ledford v. Smith, 212 N. C. 447, 193 S. E. 722 (1937). As to arrest for damages arising from tort, see § 1-410, par. 1 and the notes thereto.

The Worthless Check Law is a valid exercise by the State of its police powers. State v. Yarboro, 194 N. C. 498, 140 S. E. 216 (1927).

Section 14-110 Constitutional. — Section 14-110 does not contravene this section of the Constitution. See the notes to § 14-110.

Section 14-358 Unconstitutional. — Section 14-358 is unconstitutional because it contravenes this section of the Constitution. See the annotations under § 14-358.

Quoted in State v. Williams, 150 N. C. 802, 63 S. E. 949 (1909); Moose v. Barrett, 223 N. C. 524, 27 S. E. (2d) 532 (1943).

§ 17. No person taken, etc., but by law of land.—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. (Const. 1868.)

Cross References. — As to validity of statute prohibiting discharge of deleterious matter into streams, see note to § 113-172. As to meaning of term "liberty," see § 1 of this article.

As to qualification of term "liberty" see note of London v. Headen, under Art. I, § 1.

What Constitutes "Law of the Land."—It is said by Mr. Webster in Dartmouth College v. Woodward, 4 Wheat. (17 U. S.) 518, 519, 4 L. Ed. 629 (1819): "By the law of the land is most clearly intended the general law; a law which hears before it

condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land." Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897); Parish v. East Coast Cedar Co., 133 N. C. 478, 45 S. E. 768, 98 Am. St. Rep. 718 (1903); State v. Collins, 169 N. C. 323, 84 S. E. 1049 (1915).

The term "law of the land" means the general law, the law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. It means the regular course of the administration of justice through the courts of competent jurisdiction, after the manner of such courts. Procedure must be consistent with the fundamental principles of liberty and justice. State v. Chesson, 228 N. C. 259, 45 S. E. (2d) 563 (1947). See Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

The "law of the land" is equivalent to "due process of law." State v. Collins, 169 N. C. 323, 84 S. E. 1049 (1915); State v. Ballance, 229 N. C. 764, 51 S. E. (2d) 731 (1949). See National Surety Corp. v. Sharpe, 232 N. C. 98, 59 S. E. (2d) 593 (1950); Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

In Hoke v. Henderson, 15 N. C. 1, (1833), Chief Justice Ruffin said: "The clause itself means that such legislative acts as profess in themselves directly to punish persons, or to deprive the citizen of his property, without trial before the judicial tribunals, and a decision upon the matter of right, as determined by the laws under which it vested, according to the course, mode and usages of the common law as derived from our forefathers, are not effectually 'laws of the land' for those purposes." State v. Cutshell, 110 N. C. 538, 15 S. E. 261 (1892).

Restraints upon Police Power.—"Law of the land" under this section in relation to the exercise of the State police power, imposes flexible restraints which are satisfied if the act in question is not unreasonable, arbitrary or capricious and the means selected have a real and substantial relation to the objects sought to be attained. State v. Whitaker, 228 N. C. 352, 45 S. E. (2d) 860 (1947), affirmed in 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201.

Notice and Opportunity to Be Heard Required.—The essential elements of the "law of the land" are notice and opportunity to be heard or defend, before a competent tribunal, in an orderly proceeding adapted to the nature of the case, which is uniform and regular, and in accord with established rules which do not violate fundamental rights. Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

Under "the law of the land" clause of this section a judgment cannot bind a person unless he is brought before the court in some way sanctioned by law and afforded an opportunity to be heard in defense of his right. Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

An adjudication affecting the marital status and finally determining personal and property obligations must be preceded by notice and an opportunity to be heard. McLean v. McLean, 233 N. C. 139, 63 S. E. (2d) 138 (1951).

The intent and purpose of the statutes in regard to service of summons is to give notice and an opportunity to be heard, and where service is had upon a statutory process agent who is not in fact an agent or officer of defendant corporation, the imputation of the negligence of such process agent to the corporation so as to preclude it from moving to set aside a default judgment against it for surprise and excusable neglect would be a denial of due process of law. Townsend v. Carolina Coach Co., 231 N. C. 81, 56 S. E. (2d) 39 (1950).

Legislature may limit time for assertion of property right provided it affords those vested with the right a reasonable time to assert same after the enactment of the statute, since there is no vested right in procedure. Sheets v. Walsh, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Under this section no person can be deprived of his property except by his own consent or the law of the land. Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

The legislature may make classifications and distinctions in the application of laws provided they are reasonable and just and not arbitrary. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Legislative bodies may make classifications for the application of regulations provided the classifications are practicable and apply equally to all persons within a class, since the constitutional mandate prescribing discrimination requires only that there be no inequality among those within a particular group or class. State v. Trantham, 230 N. C. 641, 55 S. E. (2d) 198 (1949).

Right of Appeal.—The question whether

the right of appeal is essential to the "due process" clauses of the State or federal Constitutions is discussed in Gunter v. Sanford, 186 N. C. 452, 120 S. E. 41 (1923).

Revival of Barred Claims.—A State statute purporting to revive claim barred by statute of limitations violates due process clauses of State and federal Constitutions, whether such claim affects vested property right or arises under contract. Valleytown Tp. v. Women's Catholic Order, etc., 115 F. (2d) 459 (1940), reversing 32 F. Supp. 894.

Additional Liability Imposed by Amendatory Act Must Be Prospective. — Acts 1925, c. 117, amending § 53-42 and imposing personal liability on stockholders could not be given retroactive effect. Bank of Pinehurst v. Derby, 218 N. C. 653, 12 S. E. (2d) 260 (1940).

Double Jeopardy.—A person cannot be tried twice for the same offense under this section. State v. Mansfield, 207 N. C. 233, 176 S. E. 761 (1934).

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, 159 S. E. 14 (1931).

Section prohibits enforcing any statute which would enable one person to evade or avoid the binding force of his contracts with another, whether executed or executory. Booth v. Hairston, 193 N. C. 278, 136 S. E. 879, 57 A. L. R. 1186 (1927) citing Lowe v. Harris, 112 N. C. 472, 17 S. E. 539, 22 L. R. A. 379 (1893).

An Office as Vested Property.—Whether or not an officer appointed for a definite time to a legislative office has a vested property therein or contract right thereto has given rise to conflicting views and inharmonious decisions. In the early case of Hoke v. Henderson, 15 N. C. 1 (1833), it is held that an office is property and is the subject of protection like any other property under the provisions of this section of the Constitution. The reasoning used by the court in this case, which is to the effect that a public office exists by contracts between the State and the holder, has been the foundation for the decisions of the courts adhering to this view. See Cotten v. Ellis, 52 N. C. 545 (1860); King v. Hunter, 65 N. C. 603 (1871); Bailey v. Caldwell, 68 N. C. 472 (1873); State v. Gales, 77 N. C. 283 (1877); Wood v. Bellamy, 120 N. C. 212, 27 S. E. 113 (1897). The general trend of American authority appears to have always maintained the opposite view. See Butler v. Pennsylvania, 10 How. (51 U. S.) 402, 13 L. Ed. 472 (1850); Taylor v. Beckham, 178 U. S. 548, 44 L. Ed. 1187, 20 S. Ct. 890 (1900), the North Carolina doctrine being criticized in many of the cases. However, North Carolina has now gotten away from the view to which it adhered over a long period of time and is now in line with the general current of American authority, Hoke v. Henderson being expressly overruled in Mial v. Ellington, 134 N. C. 131, 46 S. E. 961 (1903). See historical treatment of this question contained in the Editor's Note to § 128-1.—Ed. Note.

Minimum Retail Prices on Trade-Marked Goods.—The North Carolina Fair Trade Act, permitting the establishment of minimum retail prices on trade-marked goods by agreement, does not deprive a retailer not a party to a contract with the manufacturer or distributor of any property right in preventing such retailer from selling the trademarked article at a price less than that stipulated by contract, since such retailer acquires title with knowledge and subject to the stipulations relative to the minimum retail price permitted by the law in protecting the property right of the manufacturer or distributor in his trade-mark and good will, which property right subsists while the goods bear his trade-mark, even after he has parted with title of commodity itself. Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

Vested Right in Dedicated Property. — Lots in a subdivision were sold with reference to a plat showing the street in question to be 99 feet in width. At the time the charter was granted to a municipality embracing the lands, the only plat recorded was a revised one showing the street as 80 feet wide. The granting of the charter cannot be construed as having the effect of limiting the width of the street to 80 feet so as to defeat the vested right of purchasers of lots with reference to the original plat to compel the owner to abide by its dedication of the street for the full width as shown by the plat. Home Real Estate Loan, etc., Co. v. Carolina Beach, 216 N. C. 778, 7 S. E. (2d) 13 (1940).

Infringement of Rights of Litigating Party.—The discretion of the trial judge given him over the trial of a cause is rarely interfered with, though his action may be set aside for such gross abuse as would invade the legal rights to the prejudice of the appealing party. State v. Sauls, 190 N. C. 810, 130 S. E. 848 (1925).

The question as to whether the defendant

in a criminal action has sufficient time to prepare his defense before trial, and has thereby been deprived of his rights under the provisions of Article I, § 17, of our State Constitution, is one addressed to the sound discretion of the trial judge, which will not be reviewed on appeal when it is not made to appear that this discretionary power has been abused by him. State v. Burnett, 184 N. C. 783, 115 S. E. 57 (1922).

Right of Cross-Examination.—The right of the defendant in a criminal action to cross-examine expert witnesses who have testified their opinion against him is a material one, guaranteed by this section of the Constitution and a denial thereof may not be held as merely a technicality and harmless; nor is this error cured by the fact that he has an opportunity to cross-examine one of these witnesses in refutation of the correctness of the facts upon which his conclusion was based, especially when the other witness is to be regarded as the most important one. State v. Hightower, 187 N. C. 300, 121 S. E. 616 (1924).

License of Attorney Protected. — This section constitutes the basis of the decision in those cases holding that an attorney who has been duly licensed to practice law cannot be disbarred or deprived of his license and right to practice, except upon conviction for a criminal offense, or after confession in open court. See Ex Parte Schenck, 65 N. C. 353 (1871), and cases there cited.

A contingent remainderman in lands acquires his interest therein subject to the payment of testator's debts, and in that respect can acquire no vested interest therein, and a sale thereof in good faith and at a fair price by the executrix, for the payment of decedent's debts, as authorized by statute, when by proper proceedings the land could have been sold for the purpose, though the executrix has mistaken therein the authority given her under the will, cannot be held as contrary to the provision of this section. Charlotte Consolidated Constr. Co. v. Brockenbrough, 187 N. C. 65, 121 S. E. 7 (1924).

Classification for Tax Purposes. — The legislature may levy a sales tax or a tax on the business of selling tangible personal property, levied as a license or privilege tax, and classify trades, callings, and occupations for the imposition of a tax, and classify articles sold as the basis for computing the tax, exempting certain classes of articles and providing a graduated tax as to other classes of articles, or differentiate in the method of collecting the tax as to some of the classes, provided the levy applies equally and uniformly to all who fall within each particular classification, and provided the classifications are reasonable and based upon some real distinction. Leonard v. Maxwell, 216 N. C. 89, 3 S. E. (2d) 316 (1939). See also, Caldwell Land, etc., Co. v. Smith, 146 N. C. 199, 59 S. E. 653 (1907).

Taxation Exemptions.—The provision of Art. V, Schedule E, of the Revenue Act of 1937, making a distinction between wholesale and retail merchants, and exempting sales of ice, medicines on a prescription, fish and farm products when sold in the original or unmanufactured state, commercial fertilizer, agricultural lime and plaster, public school books, sale of used or repossessed articles, and sales to the government or governmental agencies, etc., constitute classifications based upon reasonable and real distinctions, and an allegation that the act is void as imposing arbitrary discriminations in making such classifications is untenable. Leonard v. Maxwell, 216 N. C. 89, 3 S. E. (2d) 316 (1939).

Irregular Taxation.—"In Commissioners v. Lacy, 174 N. C. 141, 93 S. E. 482 (1917), the court said: 'It is a fundamental principle in the law of taxation that taxes may only be levied for public purposes and for the benefit of the public on whom they are imposed, and to lay these burdens upon one district for benefits appertaining solely to another is in clear violation of established principles of right and contrary to the express provisions of our Constitution, Art. I, § 17, which forbids that any person shall be disseized of his freehold liberties and privileges or in any manner deprived of his life, liberty or property but by the law of the land.' " Approved in Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927); Board v. Hanchett Bond Co., 194 N. C. 137, 138 S. E. 614 (1927).

Tax Statute Not Providing for Notice and Hearing. — An act which permits the governing board of a town to list, value and revalue all property within its limits separately and independently of § 105-333 without providing for notice and hearing as to such valuations, and without setting up precise standards for evaluation, contravenes due process of law and is unconstitutional. Bowie v. West Jefferson, 231 N. C. 408, 57 S. E. (2d) 369 (1950).

Inheritance Tax upon Nonresident Distributees Held Valid.—Rhode Island Hospital Trust Co. v. Doughton, 187 N. C. 263, 121 S. E. 741 (1924).

Act Licensing the Hauling of Lumber Held Valid. — State v. Bullock, 161 N. C. 323, 75 S. E. 942 (1912). See also, Dalton v. Brown & Co., 159 N. C. 175, 75 S. E.

40, 42 L. R. A. (N. S.) 506 (1912); Southeastern Exp. Co. v. Charlotte, 186 N. C. 668, 120 S. E. 475 (1923).

Employment Security Tax. — Imposition of the employment security tax does not deprive an individual who operates three places of business, employing in the aggregate more than 8 employees, of property without due process of law or deny him of the equal protection of the laws. State v. Willis Barber, etc., Shop, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Eminent Domain by Park Commission. —The exercise of the power of eminent domain by the North Carolina National Park Commission under Public Laws 1927, c. 48, is not contrary to the "due process" clause of the State Constitution. Yarbrough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928). See also, Suncrest Lbr. Co. v. North Carolina Park Comm., 30 F. (2d) 121 (1929).

Only those whose interests in the particular lands sought to be taken for the national park contemplated by c. 48, Public Laws, of 1927, § 27, may sue in equity for injunctive relief on the ground that their lands are about to be taken contrary to the provisions of the Fourteenth Amendment to the federal Constitution and of this section. Yarbrough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928).

Eminent Domain by County Commission.—See Hill v. Board of Com'rs, 190 N. C. 123, 129 S. E. 154 (1925).

Just Compensation Required if Private Property Is Taken.—The principle, forbidding the taking of private property for public use without just compensation, is so grounded in natural equity that it has never been denied to be a part of the law of North Carolina. Yancey v. North Carolina State Highway, etc., Comm., 222 N. C. 106, 22 S. E. (2d) 256 (1942).

Private property may not be taken even for a public use without compensation. McKinney v. Deneen, 231 N. C. 540, 58 S. E. (2d) 107 (1950).

The exercise of the power of eminent domain by a corporation authorized by its charter to generate and sell electricity, and given power of eminent domain to acquire the necessary rights of way and lands for its dams cannot be said to be exercising this power in a private capacity in contravention of this section. Whiting Mfg. Co. v. Carolina Aluminum Co., 207 N. C. 52, 175 S. E. 698 (1934).

Drainage Laws.—See generally, Lang v. Carolina Land, etc., Co., 169 N. C. 662, 86 S. E. 599 (1915).

Approval of Law Authorizing Issue of Bonds. — Where a valid act authorizing a county to issue bonds has been passed in accordance with the provisions of the State Constitution, Art. II, § 14, leaving out the requirement that the question must first be submitted to the qualified voters, and another act ratified a few days later makes this requirement, the two acts will be construed in pari materia, and the later as not having a retroactive effect, and the county does not acquire a vested right under the first ratified act. Graham County v. Terry, 194 N. C. 22, 138 S. E. 443 (1927).

Sale of Land for Taxes.—For a valid sale of land for taxes, the tax list and notice of sale must contain a sufficiently definite description of the land to allow the land to be identified, and to be notice to those persons whose interest is to be affected, and if the description is not so definite, a sale thereunder will be void as not complying with the statute, and as taking property without giving notice and as not affording those whose property is sold an opportunity to be heard. Bryson v. McCoy, 194 N. C. 91, 138 S. E. 420 (1927).

Sale of Property at Foreclosure. — This section is not violated by § 45-21.34, regulating the sale of real property upon the foreclosure of mortgages or deeds of trust. Woltz v. Asheville Safe Deposit Co., 206 N. C. 239, 173 S. E. 587 (1934).

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 (1931).

Forfeiture of property and vesting its title in another for tax delinquency by mere legislative declaration is the taking of property without due process of law. Eason v. Spence, 232 N. C. 579, 61 S. E. (2d) 717 (1950).

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 (1931).

Statute Providing Service of Summons by Publication on Taxpayers Is Valid. — The statute (§ 159-52 et seq.), conferring jurisdiction upon the superior courts of the counties over citizens and owners of tax-

able property within the county without requiring each such owner or citizen to be named as a party in the complaint or summons and providing for service of summons by publication, is not a violation of this section. Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937).

Freedom to contract is both a liberty and a property right within the protection of the due process clauses of the federal Constitution and this section of the State Constitution. See Morris v. Holshouser, 220 N. C. 293, 17 S. E. (2d) 115, 137 A. L. R. 733 (1941), discussing law pertaining to employee's right to assign future wages.

Section 45-21.36 is constitutional and valid, since it recognizes the obligation of the debtor to pay his debt and the right of the creditor to enforce payment by action in accordance with the terms of the agreement, but provides merely for judicial supervision of sales under power to the end that the price bid at the sale shall not be conclusive as to the value of the property, and that the creditor may not recover any deficiency after applying the purchase price to the notes without first accounting for the fair value of the property in accordance with well settled principles of equity. Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co., 210 N. C. 29, 185 S. E. 482 (1936).

The 1933 amendment to § 1-512 is constitutional, since it does not impair the obligations of a contract under this section, the effect of the statute being merely to alter the method of procedure in which there can be no vested right. Sovereign Camp, W. O. W. v. Board of Com'rs, 208 N. C. 433, 181 S. E. 339 (1935).

Defendants Are Not Twice Put in Jeopardy by Second Arraignment.—Where each defendant has been separately arraigned and has pleaded to the bill of indictment, following which the cases are continued to the next term of court, defendants are not twice put in jeopardy by a second arraignment when the cases are called for trial the following term. State v. Watson, 209 N. C. 229, 183 S. E. 286 (1936).

Waiver of Rights of Defendant in Criminal Case. — State v. Bazemore, 193 N. C. 336, 137 S. E. 172 (1927).

Search and Seizure.—See State v. Fowler, 172 N. C. 905, 90 S. E. 408 (1916).

Assessments without Notice, etc., Are Void. — Street assessments made under charter provisions failing to provide notice and an opportunity to be heard to those assessed are void as violating due process of law, and may not be validated by curative acts of the legislature. Lexington v. Lopp, 210 N. C. 196, 185 S. E. 766 (1936).

Right to Pursue Occupation. — Historically and fundamentally the constitutional guaranties of individual liberty protect the individual in the selection and pursuit of the ordinary occupations against the unwarranted invocation of the police power. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Statute providing for licensing and supervision of photographers held violative of this section. State v. Ballance, 229 N. C. 764, 51 S. E. (2d) 731 (1949), overruling State v. Lawrence, 213 N. C. 674, 197 S. E. 586, 116 A. L. R. 1366 (1938).

Section 19-1 et seq., providing for the abatement of public nuisances by temporary order without bond, and the sale of the personalty and the closing of the property for one year upon the finding of the jury, is constitutional, and does not impinge on this section of the Constitution, or Art. XIV, § 1, of the federal Constitution. Carpenter v. Boyles, 213 N. C. 432, 196 S. E. 850 (1938).

Exclusion of Women from Grand Jury. —The male defendant moved to quash the bill of indictment on the ground that it was returned by a grand jury composed entirely of men and that women had been unlawfully excluded therefrom. Held: There had been no discrimination against the class or sex to which defendant belongs, and he could not have been prejudiced by the alleged discrimination, and therefore he may not raise the question of the qualification of women to serve as jurors or maintain that the proceeding constituted a violation of the equal protection guaranteed by the Fourteenth Amendment of the federal Constitution and by this section. State v Sims, 213 N. C. 590, 197 S. E. 176 (1938).

Exclusion of Negroes from Grand Jury. —The evidence disclosed that the names of negroes were printed in red and the names of white persons were printed in black in preparing names for the jury box, and that in drawing the names from the box the names of negroes were without exception rejected. It was held that the motion of defendant, a negro, to quash the indictment found by a grand jury so selected, should have been allowed, since such systematic and arbitrary exclusion of negroes from the grand jury deprived him of his constitutional rights. State v. Speller, 229 N. C. 67, 47 S. E. (2d) 537 (1948).

Zoning Regulations.—The fact that a lot would be more valuable if devoted to a nonconforming use does not deprive the owner of property without due process of law when the zoning regulations are uniform in their application to all within the

respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. Kinney v. Sutton, 230 N. C. 404, 53 S. E. (2d) 306 (1949).

Statutes declaring that the right to work shall not be dependent upon membership or non-membership in a labor union, and prohibiting certain agreements between employers and labor organizations (§§ 95-78 through 95-84), do not violate this section. State v. Whitaker, 228 N. C. 352, 45 S. E. (2d) 860 (1947), affirmed in 335 U. S. 525, 69 S. Ct. 251, 93 L. Ed. 201.

Statute making certain war veterans eligible for license to practice barbering without standing an examination did not violate this section. Motley v. State Board of Barber Examiners, 228 N. C. 337, 45 S. E. (2d) 550, 175 A. L. R. 253 (1947).

Statute Regulating Practice of Optometry.—A portion of § 90-115, relating to the practice of optometry, was held violative of this section. Palmer v. Smith, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

The fact that a justices' compensation is fixed upon a fee basis, which he will receive only in the event of conviction, does not result in depriving the defendant of trial under due process of law. Ex parte Steele, 220 N. C. 685, 18 S. E. (2d) 132 (1942).

New Trial for Error upon Second Appeal.—Where defendant has been granted a new trial for error in the charge appearing of record and upon appeal from a second conviction the record discloses a kindred error in the charge upon the second trial, a new trial must nevertheless be awarded upon the second appeal, since no person may be deprived of life or liberty except by the law of the land. State v. Starnes, 220 N. C. 384, 17 S. E. (2d) 346 (1941).

When Motion for Continuance Presents Question of Law. — Ordinarily, whether a cause shall be continued is a matter which rests in the sound discretion of the trial court and, in the absence of gross abuse, is not subject to review on appeal, but when the motion is based on a right guaranteed by the federal and State Constitutions, 14th Amend., U. S. Const., Art. I, § 11 and this section, the question presented is one of law and not of discretion, and the decision of the court below is reviewable. State v. Farrell, 223 N. C. 321, 26 S. E. (2d) 322 (1943).

Proceeding by clerk on application for letters of administration held violative of this section. See note to subdivision 4 of § 28-8.

Heir Not Bound by Judgment against Administrator.—See note to § 28-98.

To permit an operating receiver to hazard the property rights of lienholders without their consent in a perilous private enterprise merely because the court may entertain the uncertain hope that some pecuniary advantage might thereby be obtained for the general creditors or some other third persons would transgress the basic concept enshrined in this section that no person can be deprived of his property except by his own consent or the law of the land. National Surety Corp. v. Sharpe, 236 N. C. 35, 72 S. E. (2d) 109 (1952).

Applied in Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936), holding ch. 342, Public-Local Laws 1935 valid; Raleigh v. Edwards, 235 N. C. 671, 71 S. E. (2d) 396 (1952), commented on in 31 N. C. Law Rev. 125.

Quoted in Armstrong v. Polakavetz, 191 N. C. 731, 133 S. E. 16 (1926); State v. Emery, 224 N. C. 581, 31 S. E. (2d) 858 (1944).

Stated in Parker v. Board of Com'rs, 178 N. C. 92, 100 S. E. 244 (1919) (dis. op.).

Cited in Hicks v. Kearney, 189 N. C. 316, 127 S. E. 205 (1925); State v. Hardy, 189 N. C. 799, 128 S. E. 152 (1925); State v. Sauls, 190 N. C. 810, 130 S. E. 848 (1925); State v. Newsome, 195 N. C. 552, 143 S. E. 187 (1928) (con. op.); Kenilworth v. Hyder, 197 N. C. 85, 147 S. E. 736 (1929); Allen v. Carr, 210 N. C. 513, 187 S. E. 809 (1936); State v. Lawrence, 213 N. C. 674, 197 S. E. 586 (1938); Ward v. Howard, 217 N. C. 201, 7 S. E. (2d) 625 (1940); State v. Mitchell, 217 N. C. 244, 7 S. E. (2d) 567 (1940); State v. Johnson, 218 N. C. 604, 12 S. E. (2d) 278 (1940) (dis. op.); Belk's Dept. Store v. Guilford County, 222 N. C. 441, 23 S. E. (2d) 897 (1943); Reidsville v. Slade, 224 N. C. 48, 29 S. E. (2d) 215 (1944); Whitehurst v. Abbott, 225 N. C. 1, 33 S. E. (2d) 129 (1945); State v. Glidden Co., 228 N. C. 664, 46 S. E. (2d) 860 (1948); Worley v. Pipes, 229 N. C. 465, 50 S. E. (2d) 504 (1948); California-Oregon Power Co. v. Beaver Portland Cement Co., 73 F. (2d) 555 (1934); State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951); In re Housing Authority, 235 N. C. 463, 70 S. E. (2d) 500 (1952) (con. op.); State v. Fleming, 235 N. C. 660, 71 S. E. (2d) 41 (1952); Garrett v. Rose, 236 N. C. 299, 72 S. E. (2d) 843 (1952).

§ 18. 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. (Const. 1868.)

Stated in In re Schenck, 74 N. C. 607 (1876); State v. Herndon, 107 N. C. 934, 12 S. E. 268 (1890); Harkins v. Cathy, 119 N. C. 649, 26 S. E. 136 (1896).

§ 19. 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. No person shall be excluded from jury service on account of sex. (Const. 1868; 1945, c. 634, s. 1.)

Cross Reference.—As to waiver of jury trial see § 1-184 and note thereto.

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment added the second sentence.

As to less than unanimous jury verdicts in civil cases, see 27 N. C. Law Rev. 539.

In General.—The ancient mode of trial by jury has been preserved in our present Constitution. Chesson v. Kieckhefer Container Co., 223 N. C. 378, 26 S. E. (2d) 904 (1943).

This section guaranteeing the right of trial by jury in "controversies at law regarding property," includes equitable and legal elements involved in the determination of the issues made by the pleadings, but it is not required that a trial by jury be had at each stage of the proceedings when this right has elsewhere therein been properly safeguarded by statute. Commissioners v. George, 182 N. C. 414, 109 S. E. 77 (1921).

Every litigant has the constitutional right of trial by jury unless he voluntarily waives it, and, in case of a compulsory reference made to facilitate the trial of a cause, he can renew his demand for a jury trial by excepting to the report of the referee and pointing out the findings so excepted to as a basis for issues. State v. Featherstone, 120 N. C. 446, 27 S. E. 124 (1897).

The rules of law as to the burden of proof between the parties to litigation respecting damages to property resulting from negligence is one of substantial right guaranteed by the federal Constitution, and more emphatically by this section of the State Constitution. McDowell v. Norfolk Southern R. Co., 186 N. C. 571, 120 S. E. 205, 42 A. L. R. 857 (1923).

Where the parties to a civil action do not waive trial by jury nor consent that the judge find the facts, it is error for the judge to enter judgment without the aid of the jury on the controverted issues of fact raised by the pleadings. Icenhour v. Bowman, 233 N. C. 43, 64 S. E. (2d) 428 (1951).

It was error for a trial court to determine issues of fact raised by the pleadings in the absence of waiver of the constitutional and statutory right to a trial by jury, there being no question of reference. Sparks v. Sparks, 232 N. C. 492, 61 S. E. (2d) 356 (1950).

The word "jury" is to be given the signification which it had when the Constitution was adopted, i. e., a body of twelve men in a court of justice duly selected and impaneled in the case to be tried. State v. Emery, 224 N. C. 581, 31 S. E. (2d) 858 (1944), decided prior to the 1945 amendment.—Ed. Note.

Where there is more than a scintilla of evidence to sustain the allegations of the complaint, the case must be submitted to the jury, its sufficiency to warrant a verdict for plaintiff being for the determination of the jury, subject only to the discretionary power of the trial court to set the verdict aside in proper cases, and a strict adherence to this rule is necessary to preserve the right of trial by jury guaranteed under this section. Fox v. Asheville Army Store, 215 N. C. 187, 1 S. E. (2d) 550 (1939).

Right to a jury trial is guaranteed by this section, and where the parties do not consent to trial by the court, it may not determine, prior to the introduction of evidence, an issue of fact joined by the pleadings. Hershey Corp. v. Atlantic Coast Line R. Co., 207 N. C. 122, 176 S. E. 265 (1934).

The policy for the preservation of the right to a trial by jury provided for by this section of the Constitution is ordinarily for the legislature to declare. Board v. Forrest, 193 N. C. 519, 137 S. E. 431 (1927).

But the right to trial by jury guaranteed by this section, does not apply to matters concerned with the administration of the tax laws and the machinery for the collection of taxes, unless the statute affords express authority for this method of determining questions of fact. State v. Willis Barber, etc., Shop, 219 N. C. 709, 15 S. E. (2d) 4 (1941).

Right Not Unqualified. — This section

does not confer the right to demand the intervention of a jury absolutely and unqualifiedly, but only in cases involving issues of fact. McQueen v. People's Nat. Bank, 111 N. C. 509, 16 S. E. 270 (1892).

The right to trial by jury applies exclusively to actions in which legal rights are involved. State v. Great Southern Trucking Co., 223 N. C. 687, 28 S. E. (2d) 201 (1943) (con. op.).

This constitutional provision applies only to cases in which the prerogative existed at common law or by statute at the time the Constitution was adopted. Chowan & Southern R. Co. v. Parker, 105 N. C. 246, 11 S. E. 328 (1890); Groves v. Ware, 182 N. C. 553, 109 S. E. 568 (1921); Belk's Dept. Store v. Guilford County, 222 N. C. 441, 23 S. E. (2d) 897 (1943).

In Groves v. Ware, 182 N. C. 553, 109 S. E. 568 (1921), it was held that the right to a trial by jury as provided in this section applies only to cases in which the prerogative existed at common law or was procured by statute at the time the Constitution was adopted, and not to those in which the right and the remedy are thereafter created by statute. The section cannot be invoked to deprive a public official of the discretion with which he is clothed by legislative enactment. McInnish v. Board of Education, 187 N. C. 494, 122 S. E. 182 (1924).

The "right of trial by jury" is guaranteed without any exceptions wherever a recovery is sought which will transfer money or property of one person to another by order of a court, and the amount thus sought to be recovered depends upon issues of fact, as in this case, the value of the services rendered, which is denied by the defendant guardian. In re Stone, 176 N. C. 336, 97 S. E. 216 (1918) (dis. op.).

Under Workmen's Compensation Act trial by jury is not a constitutional right. Hagler v. Mecklenburg Highway Comm., 200 N. C. 733, 158 S. E. 383 (1931).

"Trial" refers to a dispute and issue of fact, and the expression "trial by jury," as used in this section does not necessarily signify that every legal controversy is to be determined by a jury. Com'rs v. George, 182 N. C. 414, 109 S. E. 77 (1921).

Compulsory Reference Not Violative of Section.—See note to § 1-189.

Controversies between Board of Education and County Commissioners. — See Board of Education v. Board of Com'rs, 182 N. C. 571, 109 S. E. 630 (1921), citing Board of Education v. Board of Com'rs, 174 N. C. 469, 93 S. E. 1001 (1917).

Criminal Cases. — The right to trial by jury is beyond controversy, both in civil and criminal cases. State v. Rogers, 162 N. C. 656, 78 S. E. 293, 46 L. R. A. (N. S.) 38, Ann. Cas. 1914A, 867 (1913) (dis. op.).

Proceedings before the judge to remove a prosecuting attorney from office "for willful misconduct or maladministration in office," do not require an issue to be submitted to the jury, such office is not a property right under the provisions of this section. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Miscellaneous Cases. — In an action for damages for negligently setting fire to plaintiff's woods by sparks from defendant's engine, it was held that this section guaranteed, as a "sacred and inviolable" right, that the plaintiff might have the case submitted to the jury. Williams v. Atlantic Coast Line R. Co., 140 N. C. 623, 53 S. E. 448 (1906).

In proceedings before the corporation commission there is no jury trial provided, and hence if no appeal lies therefrom by the plaintiff he is deprived of this sacred and inviolable right as guaranteed by this section. Walls v. Strickland, 174 N. C. 298, 93 S. E. 857 (1917) (dis. op.).

When in proceedings for alimony without divorce the pleadings raise the issues of the validity of marriage between the parties, or whether the husband had separated himself from the wife and failed to provide her suitable or reasonable sustenance, or the husband is a drunkard or spendthrift (§ 50-16), the right of trial by jury arises to the defendant, and the case should be transferred by the judge to the civil issue docket for the purpose. Crews v. Crews, 175 N. C. 168, 95 S. E. 149 (1918).

Polling Jury in Civil Actions. — Under this section the losing party in a civil action may demand a polling of the jury upon the return of the verdict, as a matter of right. Culbreth v. Mfg. Co., 189 N. C. 208, 126 S. E. 419 (1925).

Upon the coming in of the verdict in a civil action, either party to the action has the constitutional right to have the jury polled before accepting the verdict as a unanimous one. In re Will of Sugg, 194 N. C. 638, 140 S. E. 604 (1927). See note under Art. I, § 13.

Effect of Fourteenth Amendment of Federal Constitution.—A trial by jury in suits at common law pending in the State courts is not a privilege or immunity of national citizenship which the states are forbidden by the Fourteenth Amendment to abridge, and the requirements of the federal Constitution that no person shall be deprived of his property without due process of law does not imply that all trials in the State

courts affecting property must be by jury, but it is met if the trial be had according to the settled course of judicial proceedings. Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897).

Subsistence Pendente Lite. — Provisions of § 50-16 empowering the court to allow subsistence and counsel fees pendente lite to plaintiff in an action for alimony without divorce do not violate this section. Peele v. Peele, 216 N. C. 298, 4 S. E. (2d) 616 (1939).

This section does not require court review of the valuation of land for taxation, or determination of such value by a jury in a de novo hearing, and will not support resort to certiorari for that purpose. Belk's Dept. Store v. Guilford County, 222 N. C. 441, 23 S. E. (2d) 897 (1943).

Quoted in Silvey v. Seaboard Air Line R. Co., 172 N. C. 110, 90 S. E. 4 (1916) (dis. op.); Lyman v. Southern Coal Co., 183 N. C. 581, 112 S. E. 242 (1922); Green Sea Lbr. Co. v. Pemberton, 188 N. C. 532, 125 S. E. 119 (1924); Shuford v. Scruggs, 201 N. C. 685, 161 S. E. 315 (1931).

Cited in In re Parker, 209 N. C. 693, 184 S. E. 532 (1936); Whitehurst v. Abbott, 225 N. C. 1, 33 S. E. (2d) 129 (1945).

§ **20. 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. (Const. 1868.)

Contract Prohibiting Entering into Business.—A contract upon the sale of a newspaper that the seller shall not for a period of ten years be connected with any newspaper in the state without obtaining the consent of the purchaser is not void under this section. Cowan v. Fairbrother, 118 N. C. 406, 24 S. E. 212 (1896).

This decision is placed on the ground that the framers of the Constitution did not intend to restrict the power of any person to dispose of anything of value which, as the creature of his own mental or physical exertions, has become his property.—Ed. Note.

Applied in Osborn v. Leach, 135 N. C. 628, 47 S. E. 811 (1904); Pentuff v. Park, 194 N. C. 146, 138 S. E. 616 (1927).

§ **21. Habeas corpus.**—The privilege of the writ of habeas corpus shall not be suspended. (Const. 1868.)

Cross Reference.—See § 17-3 and notes thereto.

Stated in McEachern v. McEachern, 210 N. C. 98, 185 S. E. 684 (1936).

§ **22. Property qualification.**—As 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. (Const. 1868.)

§ **23. Representation and taxation.**—The people of this 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 General Assembly, freely given. (Const. 1868.)

§ **24. 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 kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice. (Const. 1868; Convention 1875.)

Editor's Note.—The last sentence of this section was added by the Convention of 1875.

Generally. — This provision of the Constitution plainly observes the distinction between the "right to keep and bear arms," and "the practice of carrying concealed weapons." The first, it is declared, shall not be infringed, while the latter may be prohibited. Even without this constitutional provision, the legislature may by law regulate the right to bear arms in a manner conducive to the public peace. State v. Speller, 86 N. C. 697 (1882), approved in State v. Reams, 121 N. C. 556, 27 S. E. 1004 (1897). As to code provision regulating concealed weapons, see § 14-269 and notes thereto.

Power of Legislature Limited.—The last clause of this provision, constitutes an ex-

ception to the first and indicates the extent to which the right of the people to bear arms can be restricted; that is, the legislature can prohibit the carrying of concealed weapons, but no further. State v. Kerner, 181 N. C. 574, 107 S. E. 222 (1921).

§ **25. Right of the people to assemble together.**—The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances. But secret political societies are dangerous to the liberties of a free people, and should not be tolerated. (Const. 1868; Convention 1875.)

Editor's Note.—The last sentence of this section was added by the Convention of 1875.

Cited in State v. Lea, 203 N. C. 316, 166 S. E. 292 (1932) (con. op.).

§ **26. Religious liberty.**—All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience. (Const. 1868; 1945, c. 634, s. 1.)

Editor's Note. — This section was amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment substituted "persons" for "men".

A municipal ordinance prohibiting the handling of venomous and poisonous reptiles in such a manner as to endanger the public health, safety and welfare, will not be held invalid upon defendants' contention that the ordinance interferes with the exercise of their religious practices. State v. Massey, 229 N. C. 734, 51 S. E. (2d) 179 (1949).

Applied in Rodman v. Robinson, 134 N. C. 503, 47 S. E. 19 (1904); Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927).

Quoted in State v. Beal, 199 N. C. 278, 154 S. E. 604 (1930).

§ **27. Education.**—The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right. (Const. 1868.)

Applied in Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936).

Stated in Bear v. Commissioners, 124 N. C. 204, 32 S. E. 558 (1899); Collie v. Commissioners, 145 N. C. 170, 59 S. E. 44 (1907).

Cited in Lowery v. Board of Graded School Trustees, 140 N. C. 33, 52 S. E. 267 (1905).

§ **28. Elections should be frequent.**—For redress of grievances, and for amending and strengthening the laws, elections should be often held. (Const. 1868.)

Stated in State v. Yarboro, 194 N. C. 498, 140 S. E. 216 (1927) (con. op.).

Cited in McLean v. Durham County Board of Elections, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

§ **29. Recurrence to fundamental principles.**—A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty. (Const. 1868.)

Liberal Construction.—The Constitution must be construed in the light of its history, and must be liberally construed in aid of progress, but a liberal construction is especially required in interpreting those provisions safeguarding individual liberty. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Applied in State v. Hardy, 189 N. C. 799, 128 S. E. 152 (1925), as to conviction, in a criminal action, of defendant except by the law of the land or under a unanimous verdict of guilty by the jury, and as to presumption of innocence upon denial of guilt, with the statutory right to request to go on the stand as a witness in his own behalf, in not exercising which no prejudice shall be created against him, and as to the further right to have counsel for his defense who may argue the matters of law as well as of fact to the jury; and as to defendant's right to have the trial judge in his instructions to the jury not give his opinion whether a fact is fully or sufficiently proven.

Quoted in Clinton v. Standard Oil Co., 193 N. C. 432, 137 S. E. 183, 55 A. L. R. 252 (1927); Brewer v. Valk, 204 N. C. 186,

167 S. E. 638, 87 A. L. R. 237 (1933); State v. Sasseen, 206 N. C. 644, 175 S. E. 142 (1934).

Cited in Beaufort v. Mayo, 207 N. C. 211, 176 S. E. 753 (1934); State v. Lawrence, 213 N. C. 674, 197 S. E. 586 (1938).

§ 30. Hereditary emoluments, etc. — No hereditary emoluments, privileges, or honors ought to be granted or conferred in this State (Const. 1868.)

Editor's Note.—This provision is usually construed in connection with § 31 of this article.

§ 31. Perpetuities, etc. — Perpetuities and monopolies are contrary to the genius of a free state and ought not to be allowed. (Const. 1868.)

Cross Reference. — See Art. I, § 7 and note thereto.

Early Vesting of Estates Favored. — Where, by a correct interpretation of the will, it will reasonably be allowed, the law will favor the early vesting of estates against the interests of a contingent remainderman. Walker v. Trollinger, 192 N. C. 744, 135 S. E. 871 (1926).

This section is a fundamental democratic principle of "equal rights and opportunities to all, special privileges to none." Newman v. Watkins, 208 N. C. 675, 182 S. E. 453 (1935) (dis. op.).

The common law rule against perpetuities is recognized and enforced in this State. The rule is not one of construction but a positive mandate of law to be obeyed irrespective of the question of intention. Its primary purpose is to restrict the permissible creation of future interests and prevent undue restraint upon or suspension of the right of alienation. Whenever the future interest takes effect, or the right of alienation is suspended beyond the period stipulated in the rule, it is violative thereof. Mercer v. Mercer, 230 N. C. 101, 52 S. E. (2d) 229 (1949).

As against Private Trusts. — The rule against perpetuities applies to private trusts. And when a private trust violates the rule the court will not limit the duration of the trust but will declare the whole trust invalid. Mercer v. Mercer, 230 N. C. 101, 52 S. E. (2d) 229 (1949), holding devise of property in trust void because violative of rule.

Failure to Provide for Successors to Office.—The General Assembly having failed to appoint or provide for the election of successors to the highway and sinking fund commissioners of Madison County, who were appointed for a four or six-year term by c. 341, Public-Local Laws of 1931, the General Assembly is presumed to acquiesce in their continuance in office, and the General Assembly having power to terminate, change or continue the appointments, it will not be held that it intended to create perpetuities or exclusive emoluments in violation of any of the provisions of this article, and said commissioners continue to hold office with power to discharge the duties thereof. Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

Prohibitive Regulations upon Engaging in Business.—See State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Miscellaneous Cases. — Selection by a commission of persons qualified to act as pilots, St. George v. Hardie, 147 N. C. 88, 60 S. E. 920 (1908); ordinance granting the exclusive privilege to construct and maintain water-works within the corporate limits of the town, Elizabeth City Water, etc., Co. v. Elizabeth City, 188 N. C. 278, 124 S. E. 611 (1924); in Standard Oil Co. v. United States, 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911), and United States v. American Tobacco Co., 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911), stipulations in partial restraint of trade were held not to be obnoxious to the law unless they were unreasonable and likely to become monopolies, which are obnoxious to this section, Tobacco Growers' Cooperative Ass'n v. Jones, 185 N. C. 265, 117 S. E. 174, 33 A. L. R. 231 (1923); North Carolina Fair Trade Act, Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939); police power to regulate those engaged in the business of operating cleaning and pressing plants, State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

Statute Requiring Examination of Former Dentists Returning to State Is Valid. — Section 90-38 providing that a licensed dentist who retires or removes from the State must pass an examination upon returning to the State does not confer exclusive emoluments and privileges on continuously practicing dentists contrary to the provisions of this and the preceding section. Allen v. Carr, 210 N. C. 513, 187 S. E. 89 (1936).

Statute Regulating Practice of Optometry. — A portion of § 90-115, relating to

the practice of optometry, was held violative of this section. Palmer v. Smith, 229 N. C. 612, 51 S. E. (2d) 8 (1948).

Statute relating to licensing and supervision of photographers tends to create a monopoly in violation of this section. State v. Ballance, 229 N. C. 764, 51 S. E. (2d) 731 (1949).

Applied in State v. Warren, 211 N. C. 75, 189 S. E. 108 (1937), holding c. 241, Public-Local Laws 1927 unconstitutional; Bennett v. Southern Ry. Co., 211 N. C. 474, 191 S. E. 240 (1937). Applied to right to operate a public ferry in Robinson v. Lamb, 126 N. C. 492, 36 S. E. 29 (1900); and to right to operate filling station in certain designated districts, in Clinton v. Standard Oil Co., 193 N. C. 432, 137 S. E. 183 (1927); and to right to tax a bakery in Hilton v. Harris, 207 N. C. 465, 177 S. E. 411 (1934).

Quoted in State v. Cantwell, 142 N. C. 604, 55 S. E. 820, 8 L. R. A. (N. S.) 498 (1906) (dis. op.); Kornegay v. Goldsboro, 180 N. C. 441, 105 S. E. 187 (1920) (dis. op.); Security Nat. Bank v. Sternberger, 207 N. C. 811, 178 S. E. 595 (1935); State v. Atlantic Ice, etc., Co., 210 N. C. 742, 188 S. E. 412 (1936).

Cited in Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927); Allen v. Carr, 210 N. C. 513, 187 S. E. 809 (1936); Cowan v. Security Life, etc., Co., 211 N. C. 18, 188 S. E. 812 (1936); State v. Lawrence, 213 N. C. 674, 197 S. E. 586 (1938); Patterson v. Southern Ry. Co., 214 N. C. 38, 198 S. E. 364 (1938); State v. Mitchell, 217 N. C. 244 7 S. E. (2d) 567 (1940); State v. Mobley, 234 N. C. 55, 66 S. E. (2d) 12 (1951).

§ **32. 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. (Const. 1868.)

Cross Reference. — See annotations to § 49-2.

Definition.—An ex post facto law is one which either makes that a crime which was not a crime when the offense was committed or which imposes a heavier sentence than that which was prescribed by law at that time. State v. Broadway, 157 N. C. 598, 72 S. E. 987 (1911). But a retrospective statute is not necessarily void. Tabor v. Ward, 83 N. C. 291 (1880).

The general rule, subject, however, to some exceptions, is that the legislature may validate retrospectively any proceeding which might have been authorized in advance, even though its act may operate to divest a right of action existing in favor of an individual, or subject him to a loss he would otherwise not have incurred. Anderson v. Wilkins, 142 N. C. 154, 55 S. E. 272 (1906).

Applies Only to Criminal Statutes.—An ex post facto statute prohibited by this section relates only to criminal statutes, and though vested rights may not be affected by retroactive laws, contingent interests may be affected thereby, and where there is a voluntary trust estate with the limitation over upon a contingent determinable at some future time as to the persons who take thereunder, the power of revocation of the trust given by § 39-6, is not objectionable as falling within the constitutional inhibition. Stanback v. Citizens Nat. Bank, 197 N. C. 292, 148 S. E. 313 (1929).

Whenever a retrospective statute applies to crimes and penalties, it is an ex post facto law. State v. Bond, 49 N. C. 9 (1856); State v. Bell, 61 N. C. 76 (1867).

Miscellaneous Cases.—Validation of proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition, is proper and such act cannot be successfully attacked because it is retroactive or retrospective. Holton v. Mocksville, 189 N. C. 144, 126 S. E. 326 (1925); Unemployment Compensation Comm. v. Wachovia Bank, etc., Co., 215 N. C. 491, 2 S. E. (2d) 592 (1939); prosecution for wilful failure to support illegitimate child born after the passage of the act although the child was begotten before the effective date of the statute, State v. Mansfield, 207 N. C. 233, 176 S. E. 761 (1934).

Unemployment Compensation Taxes. — Taxes levied for the year 1936 under the Unemployment Compensation Act, section 96-1 et seq., are void as violating this section. Unemployment Compensation Comm. v. Wachovia Bank, etc., Co., 215 N. C. 491, 2 S. E. (2d) 592 (1939).

Cited in State v. Hester, 209 N. C. 99, 182 S. E. 738 (1935).

§ **33. Slavery prohibited.**—Slavery and involuntary servitude, otherwise than for crime, whereof the parties shall have been duly convicted, shall be, and are hereby forever prohibited within this State. (Const. 1868.)

§ 34. State boundaries.—The limits and boundaries of the State shall be and remain as they now are. (Const. 1868.)

§ 35. 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. (Const. 1868.)

Editor's Note.—For comment on unborn child being a person within the meaning of this section, see 28 N. C. Law Rev. 245.

Scope and Effect.—See Pentuff v. Park, 194 N. C. 146, 138 S. E. 616, 53 A. L. R. 626 (1927), quoting Osborn v. Leach, 135 N. C. 628, 47 S. E. 811, 66 L. R. A. 648 (1904).

The salutary principle set forth in this section does not justify the use of the courts, by the assertion of fanciful rights or by complaints based upon imaginary wrongs to hinder or delay others in the enjoyment of rights founded upon the law and in accord with justice and fair dealing among men. Carson v. Fleming, 188 N. C. 600, 125 S. E. 259 (1924).

Delay Caused by Irregular Pleading. — Under the provisions of this section an adversary party ought not to be delayed in the final adjudication of the controversy by the fact that the exceptions taken by the opposite party are so drawn as to take two chances, first of a favorable decision by the court, and then of a finding in his favor by the jury. Driller Co. v. Worth, 118 N. C. 746, 24 S. E. 517 (1896). Nor ought he to be delayed because the demand for a jury trial fails to point out the precise issue as to which testimony must be offered. Id. So also, the rights of the appellee will be protected when the appellant failed to print the record as required, and motion to reinstate the case, after dismissal, came too late. Cowan v. Layburn, 116 N. C. 526, 20 S. E. 965 (1895).

Disregarding Attempted Appeal from Nonappealable Order. — In order to promote the principle set forth in this section, courts may disregard an attempted appeal from a nonappealable interlocutory order and proceed with trial to avoid delay. Veazey v. Durham, 231 N. C. 357, 57 S. E. (2d) 377 (1950).

The denial of a motion for judgment on the pleadings is not immediately appealable, since otherwise a litigant could delay the administration of justice in contravention of this section. Garrett v. Rose, 236 N. C. 299, 72 S. E. (2d) 843 (1952).

A motion for a continuance is addressed to the discretion of the trial judge to be determined by him upon the facts in the exercise of his duty to administer right and justice without sale, denial, or delay. State v. Godwin, 216 N. C. 49, 3 S. E. (2d) 347 (1939).

The creation of inferior courts by the legislature has been useful in having justice administered without "delay" in accordance with this section. Albertson v. Albertson, 207 N. C. 547, 178 S. E. 352 (1935).

Foreclosure of Mortgages.—This section is not violated by §§ 45-21.34 and 45-21.35 regulating the sale of real property upon the foreclosure of mortgages or deeds of trust. Woltz v. Asheville Safe Deposit Co., 206 N. C. 239, 173 S. E. 587 (1934).

The establishment of a cartway involves the taking of private property by eminent domain, and land therefor may not be taken without giving the owner notice and an opportunity to be heard, with right of appeal according to the due course of law. Waldroup v. Ferguson, 213 N. C. 198, 195 S. E. 615 (1938).

Section 45-21.36 is constitutional and valid, since it recognizes the obligation of the debtor to pay his debt and the right of the creditor to enforce payment by action in accordance with the terms of the agreement, but provides merely for judicial supervision of sales under power to the end that the price bid at the sale shall not be conclusive as to the value of the property, and that the creditor may not recover any deficiency after applying the purchase price to the notes without first accounting for the fair value of the property in accordance with well settled principles of equity. Richmond Mtg., etc., Corp. v. Wachovia Bank, etc., Co., 210 N. C. 29, 185 S. E. 482 (1936).

Applied in Myers v. Barnhardt, 202 N. C. 49, 161 S. E. 715 (1932).

Quoted in Jacobi Hardware Co. v. Jones Cotton Co., 188 N. C. 442, 124 S. E. 756 (1924); Lucas v. Midgette, 208 N. C. 699, 182 S. E. 328 (1935) (dis. op.); Brissie v. Craig, 232 N. C. 701, 62 S. E. (2d) 330 (1950).

Cited in McKinney v. Deneen, 231 N. C. 540, 58 S. E. (2d) 107 (1950).

§ 36. 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. (Const. 1868.)

§ 37. Other rights of the people.—This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people. (Const. 1868.)

Stated in Nichols v. McKee, 68 N. C. 429 (1873); State v. Lewis, 142 N. C. 626, 55 S. E. 600 (1906); State v. Williams, 146 N. C. 618, 61 S. E. 61, 17 L. R. A. (N. S.) 299 (1908).

Cited in State v. Knight, 169 N. C. 333, 85 S. E. 418, L. R. A. 1915F, 898, Ann. Cas. 1917D, 517 (1915); Best & Co. v. Maxwell, 216 N. C. 114, 3 S. E. (2d) 292 (1939).

ARTICLE II

LEGISLATIVE DEPARTMENT

§ 1. Two branches.—The legislative authority shall be vested in two distinct branches, both dependent on the people, to-wit: a Senate and a House of Representatives. (Const 1868.)

Editor's Note.—For note on delegation of legislative authority to individuals, see 31 N. C. Law Rev. 308

Legislative function cannot be delegated. Cox v. Kinston, 217 N. C. 391, 8 S. E. (2d) 252 (1940).

But Legislature May Delegate Power to Determine Facts. — The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some facts or state of facts upon which the law makes, or intends to make, its own action depend. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

While the legislature may not delegate its power to make laws, it may delegate to local political subdivisions the power to find facts determinative of whether a particular law should become effective in the locality, and therefore it may delegate to county commissioners the power to establish a county court when necessary in the public interest, and, a fortiori it may also delegate to the county commissioners similar authority to abolish a county court established by the legislature. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

And Power to Fix Salary of Judge of County Court.—The fixing of the salary of the judge of a county court is essentially a local matter, which the General Assembly may delegate to the commissioners of the county, and therefore subsec. 14 of § 1 c. 519, Public-Local Laws of 1939, providing that the board of county commissioners of Forsyth County should have the power to fix the salary of the judge of the county court, is a constitutional delegation of the power of the legislature. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Standards Must Be Set Up for Administrative Board. — Chapter 30, Public Laws of 1937, as amended by c. 337, Public Laws of 1939, providing for the licensing of those engaged in the business of dry cleaning by the commission set up in the act, is an unconstitutional delegation of legislative authority, in that the act fails to set up the standards or provide reasonable limitations to guide the administrative board in admitting or excluding persons from the business, but leaves such power in unlimited discretion of the administrative board. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

And Industrial Commission May Award Compensation for Bodily Disfigurement.— Section 97-31 authorizing the Industrial Commission to award compensation for bodily disfigurement is not void as a delegation of legislative authority. Baxter v. Arthur Co., 216 N. C. 276, 4 S. E. (2d) 621 (1939).

The North Carolina Fair Trade Act is not unconstitutional as a delegation of legislative authority, since the act is complete in itself and requires no action on the part of any agency to put it into operation. Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

Cited in Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899). In re Applicants for License, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288 (1906); Gunter v. Sanford, 186 N. C. 452, 120 S. E. 41 (1923); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934); State v. Brockwell, 209 N. C. 209, 183 S. E. 378 (1936).

§ 2. Time of assembly. — 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. (Const. 1868; 1872-3, c. 82; Convention 1875.)

Editor's Note. — In the Constitution of 1868, the first clause of this section read as follows; "The Senate and House of Representatives shall meet annually on the third Monday in November, and when assembled shall be denominated the General Assembly." The word "annually" was changed to "biennially" in pursuance of c. 82, Public Laws of 1872-73. The Convention of 1875 changed the time of the meeting to the first Wednesday after the first Monday in January next after their election.

§ 3. **Number of senators.**—The Senate shall be composed of fifty senators, biennially chosen by ballot. (Const. 1868.)

§ 4. **Regulations in relation to districting the State for senators.** — The Senate districts shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each Senate district shall contain, as near as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more senators. (Const. 1868, 1872-3, c. 81.)

Proposed Amendment.—Session Laws 1953, c. 803 proposed that this section be rewritten to read as follows: "The senate districts shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each senate district shall contain, as near as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and where any senatorial district consists of one county, such county shall only be entitled to one senator in the General Assembly of North Carolina; provided that in no event shall any one county be entitled to more than one senator at any one time."

Editor's Note.—This was formerly section 5 of the Constitution of 1868 which was as follows: "Sec. 5. An enumeration of the inhabitants of the State shall be taken under the direction of the General Assembly in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and the said Senate districts shall be so altered by the General Assembly, at the first session after the return of every enumeration taken as aforesaid, or by order of Congress, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more Senators." Section 4 of the Constitution of 1868, which divided the State into Senatorial districts pending a division by the first General Assembly after 1871, was omitted by the Convention of 1875. So was § 8 which made the temporary apportionment for the House of Representatives.

Reapportionment is a political question and not a judicial one. Leonard v. Maxwell, 216 N. C. 89, 3 S. E. (2d) 316 (1939).

§ 5. **Regulations in relation to 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 districts for the Senate are hereinbefore directed to be laid off. (Const. 1868; 1872-3, c. 82.)

Cross Reference. — See note to preceding section.

§ 6. **Ratio of representation.**—In making the apportionment in the House of Representatives the ratio of representation shall be ascertained by dividing the amount of 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 number of the population of the State, aliens and Indians not taxed 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 twice 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. (Const. 1868.)

Changing Dividing Line of Counties.— An act which changes the dividing line between two counties is not in conflict with this section. Commissioners v. Ballard, 69 N. C. 18 (1873).

§ 7. **Qualifications for senators.**—Each member of the Senate shall not be less than twenty-five years of age, shall have resided in the State as a citizen two years, and shall have usually resided in the district for which he was chosen one year immediately preceding his election. (Const. 1868.)

§ 8. **Qualifications for representatives.**—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. (Const. 1868.)

§ 9. **Election of officers.**—In the election of all officers, whose appointment shall be conferred upon the General Assembly by the Constitution, the vote shall be viva voce. (Const. 1868.)

Presumption of Regularity. — Where a certificate shows that there was a legislative election of an officer and nothing else appearing, the law presumes a quorum and that the election was regular. Cherry v. Burns, 124 N. C. 761, 33 S. E. 136 (1899).

§ 10. **Powers in relation to divorce and alimony.**—The General Assembly shall have power to pass general laws regulating divorce and alimony, but shall not have power to grant a divorce or secure alimony in any individual case. (Const. 1868.)

Cross Reference.—For the legislative enactments passed pursuant to this section and the constructions thereof, see §§ 50-1 et seq. and the notes thereto.

Only Limitation on Legislative Power.— The only limitation on powers in enacting statutes relating to divorce is found in this section. Cooke v Cooke, 164 N. C. 272, 80 S. E. 178 (1913); Long v. Long, 206 N. C. 706, 175 S. E. 85 (1934).

§ 11. **Private laws in relation to names of persons, etc.**—The General Assembly shall not have power to pass any private law to alter the name of any person, or to legitimate any person not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of an infamous crime, but shall have power to pass general laws regulating the same. (Const. 1868.)

§ 12. **Thirty days' notice shall be given anterior to passage of private laws.**—The General Assembly shall not pass any private law, unless it shall be made to appear that thirty days' notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law. (Const. 1868.)

Notice Presumed to Be Given. — The courts will conclusively presume from the ratification of a private act that the notice required by this section has been given. Gallimore v. Thomasville, 191 N. C. 648, 132 S. E. 657 (1926); Matthews v. Blowing Rock, 207 N. C. 450, 177 S. E. 429 (1934).

In Cox v. Commissioners of Pitt County, 146 N. C. 584, 60 S. E. 516, 16 L. R. A. (N. S.) 253 (1908), is the following: The courts will not go behind the ratification of the act to ascertain whether notice has been given in accordance with this section, but will conclusively presume, from ratification, that the notice has been given. State v. Holmes, 207 N. C. 293, 176 S. E. 746 (1934).

When Testimony Heard. — Except in

case of bills coming within the provisions of § 14, the Supreme Court will not hear testimony for the purpose of showing that the notice required by this section was not given. Brodnax v. Groom, 64 N. C. 244 (1870); Gatlin v. Tarboro, 78 N. C. 119 (1878); Wilson v. Markley, 133 N. C. 616, 45 S. E. 1023 (1903); Bray v. Williams, 137 N. C. 387, 49 S. E. 887 (1905).

No Ground for Collateral Impeachment. — Where an act granting a charter to a private corporation has been duly ratified, it may not be collaterally impeached in an action between it and another on the ground that the notice had not been made as required by this section. Carolina-Tennessee Power Co. v. Hiawassee River Co., 175 N. C. 668, 96 S. E. 99 (1918).

The act creating the North Carolina National Park Commission (Laws 1927, c. 48) is a public act and does not fall within the purview of this section requiring notice that application to the General Assembly for the passage of a private act be made Yarborough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928).

Cited in Commissioners v. Snuggs, 121 N. C. 394, 28 S. E. 539 (1897).

§ 13. Vacancies. — If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election. (Const. 1868; 1951, c. 1003.)

Editor's Note. — This section was amended by vote at the general election of November 4, 1952.

§ 14. Revenue.—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 to 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. (Const. 1868.)

I. Editor's Note.
II. General Consideration.
III. Necessity of Following Section.
IV. The Journal—Speakers' Certificates.
V. Substituted Bills—Amendments.

Cross Reference.

As to subscription to railroad stock by counties, see §§ 60-21, 60-22.

I. EDITOR'S NOTE.

Editor's Note.—The authorities as to the power of county taxation are thus analyzed and summarized in Tate v. Commissioners, 122 N. C. 812, 30 S. E. 352 (1898):

A. For necessary expenses, the county commissioners may levy up to the constitutional limitation without a vote of the people or legislative permission.

B. For necessary expenses, the county commissioners may exceed the constitutional limitation by special legislative authority, without a vote of the people.

C. For other purposes than necessary expenses, a tax cannot be levied either within or in excess of the constitutional limitation except by a vote of the people under special legislative authority.

II. GENERAL CONSIDERATION.

Section Mandatory. — This section is mandatory. Union Bank v. Commissioners, 119 N. C. 214, 25 S. E. 966 (1896); Commissioners v. Snuggs, 121 N. C. 394, 28 S. E. 539 (1897); and must be strictly complied with. Smothers v. Com., 125 N. C. 480, 34 S. E. 554 (1899).

The adoption of this section, annulled all special powers remaining unexecuted, and not granted in strict conformity with its requirements. Commissioners v. Payne, 123 N. C. 432, 31 S. E. 711 (1898).

Burden of Proof. — Parties objecting have the burden of showing that acts had not been passed according to the requirements of this section. Slocomb v. Fayetteville, 125 N. C. 362, 34 S. E. 436 (1899).

Section Not Retroactive.—See Board v. Travelers' Ins. Co., 128 Fed. 817 (1904).

Applies to Townships.—The restrictions are by necessary implication applicable to townships, as they are but constituent parts of the county organization. Wittkowsky v. Commissioners, 150 N. C. 90, 63 S. E. 275 (1908); Township Road Commission v. Commissioners, 178 N. C. 61, 100

S. E. 122 (1919).

Not Applicable to Necessary County Expense.—It is not necessary to enter the yeas and nays on an act to raise revenue for a necessary county expense. Black v. Commissioners, 129 N. C. 121, 39 S. E. 818 (1901).

Issuing bonds for road purposes is a necessary expense to which the section does not apply. Leonard v. Commissioners, 185 N. C. 527, 117 S. E. 580 (1923). See Woodall v. Western Wake Commission, 176 N. C. 377, 97 S. E. 226 (1918).

An act authorizing treasurer to deliver State bonds is not within this section. Battle v. Lacy, 150 N. C. 573, 64 S. E. 505 (1909).

A motion to reconsider violates the efficacy of the original passage according to this section; for the act to be valid the final result must comply with this section. Allen v. Raleigh, 181 N. C. 453, 107 S. E. 463 (1921).

A statute for the revaluation of property is not in its strict sense a revenue act within the meaning of this section. Hart v. Com., 192 N. C. 161, 134 S. E. 403 (1926).

The filing fee required by the primary law, §§ 163-120 et seq., is in no sense a tax within the meaning of this section. McLean v. Durham County Board of Elections, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Changing of County Agencies. — The legislature has the power and authority to change the county tax agencies without further observing the requirements of the section. State v. Jennette, 190 N. C. 96, 129 S. E. 184 (1925).

Submission to People Not Required. — An act of the legislature authorizing a bond issue for public roads is valid if conforming to this section of the State Constitution, without submitting the proposition to a vote of the people. Hargrave v. Commissioners, 168 N. C. 626, 84 S. E. 1044 (1915).

Cited in Fortune v. Commissioners, 140 N. C. 322, 52 S. E. 950 (1905); Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927); Penland v. Bryson City, 199 N. C. 140, 154 S. E. 88 (1930); Nixon v. Asheville, 199 N. C. 217, 154 S. E. 93 (1930); Starmount v. Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933); Newman v. Watkins, 208 N. C. 675, 182 S. E. 453 (1935).

III. NECESSITY OF FOLLOWING SECTION.

No Authority Conferred Unless Section Followed.—An act not having been passed with the formalities required by this section is void, and confers no authority upon a city to create the debt and issue the bonds therein provided for. Charlotte v. Shepard & Co., 122 N. C. 602, 29 S. E. 842 (1898); Glenn v. Wray, 126 N. C. 730, 36 S. E. 167 (1900); Cottrell v. Lenoir, 173 N. C. 138, 91 S. E. 827 (1917).

Valid and Invalid Act on Same Subject. —An act passed according to the requirements of this section cannot be construed with an act not so passed. Pritchard v. Com., 160 N. C. 476, 76 S. E. 488 (1912).

Where a town charter is not passed in accordance with this section, such town cannot levy any tax under said charter, but it may levy taxes for necessary expense. Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 293, 41 S. E. 488 (1902).

Effect on Bonds of Failure to Comply with Section.—This section is mandatory; and, not having been complied with in the passage of certain laws authorizing certain counties, to subscribe for stock in a railroad company and issue bonds in payment therefor, bonds issued by a city pursuant thereto were void. Burlingham v. New Bern, 213 Fed. 1014 (1914).

A town may not pledge its faith or credit for the issuance of bonds for municipal purposes, unless under statutory authority given in conformity with the requirements of this section, or unless for necessary expenses. Storm v. Wrightsville Beach, 189 N. C. 679, 127 S. E. 17 (1925).

Estoppel to Deny Invalidity of Bonds. —Where township bonds are invalid because issued without authority, the township is not estopped from asserting such fact by recitals in the bonds that they are issued in compliance with the Constitution and laws of the State. Debnam v. Chitty, 131 N. C. 657, 43 S. E. 3 (1902).

The payment of interest does not preclude the inquiry as to the validity of the bonds. Glenn v. Wray, 126 N. C. 730, 36 S. E. 167 (1900).

Who May Enjoin Bond Issue. — It is competent for a taxpayer to file a complaint on behalf of himself and all other taxpayers in the State, whereby to enjoin the issue of State bonds under an unconstitutional act of Assembly. Galloway v. Jenkins, 63 N. C. 147 (1869).

Readings on Same Day. — Where the journal of the State Senate affirmatively shows that the first and second readings of a bill took place on the same day of the act is unconstitutional. Storm v. Wrightsville Beach, 189 N. C. 679, 127 S. E. 17 (1925).

IV. THE JOURNAL—SPEAKERS' CERTIFICATES.

See notes under § 23 of this article.

What Journal Must Show.—The journal

must show who voted for the bill, and that the requisite number of Senators and members did so, and no other source of evidence can be invoked, and the certificate of the presiding officers that a bill has been read three times does not obviate the necessity of examining the journal. Burlingham v. New Bern, 213 Fed. 1014 (1914).

Omission of Negative Vote.—Where the journal of the house does not give the names of any members, as voting in the negative on a bill authorizing a township to issue bonds, and it does not affirmatively appear that there were none so voting, the statute is invalid. Debnam v. Chitty, 131 N. C. 657, 43 S. E. 3 (1902).

As this section requires that on the voting of a bill before the legislature the yeas and nays shall be entered on the journals, either the nays must be on the journal, or it must affirmatively appear that there were none. Commissioners v. De Rosset, 129 N. C. 275, 40 S. E. 43 (1901).

Where the house journal showed that a certain law, authorizing the issuance of county bonds, was passed by the following vote: "Ayes 94, nays ...; total ..." —such record sufficiently showed that there was no negative vote cast, under the presumption that the clerk of the house charged with the recording of the vote performed his duty, and hence such record constituted a sufficient compliance with this section. Commissioners v. Tollman, 145 Fed. 753 (1906).

A bill to authorize a county to pledge its faith and credit by issuing bonds for road purposes, and duly ratified, is not invalid for the failure to meet the requirements of this section, by reason of the failure to record on the journal on the second reading in one of the branches of the legislature the "no" vote, when it is made to appear from the entries of the names of those voting in the affirmative that a majority of the voters had so voted, the absence of the entries of the names of those voting in the negative showing that there were none. Leonard v. Commissioners, 185 N. C. 527, 117 S. E. 580 (1923), citing Commissioners v. Trust Co., 143 N. C. 110, 55 S. E. 442 (1906).

Journals Conclusive. — The journals of the General Assembly, when competent as evidence, import absolute verity, and cannot be explained or altered by parol evidence. Wilson v. Markley, 133 N. C. 616, 45 S. E. 1023 (1903). They are the sole evidence as to whether the ayes and noes on a vote on a bill were entered on such journals. Commissioners v. De Rosset, 129 N. C. 275, 40 S. E. 43 (1901); Allen v. Raleigh, 181 N. C. 453, 107 S. E. 463 (1921); Com'rs v. Coler, 96 Fed. 284 (1899). And are conclusive as against not only a printed statute published by authority of law, but also against a duly enrolled act. Union Bank v. Commissioners, 119 N. C. 214, 25 S. E. 966 (1896); Commissioners v. Snuggs, 121 N. C. 394, 28 S. E. 539 (1897).

It appears from the journal of each house of the General Assembly that the last paragraph of § 153-152 was enacted in accordance with the requirements of this section. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

Correction of Journals. — A subsequent special session of the same legislature may correct its journals of the regular session so as to show in point of fact that a bill of this character was properly passed in accordance with these provisions. Commissioners v. Farmers Bank, 152 N. C. 387, 67 S. E. 969 (1910).

Certificate of Speakers.—The certificate of the speakers of each house of the legislature is conclusive evidence that a bill was read and passed three several readings in each house. Commissioners v. De Rosset, 129 N. C. 275, 40 S. E. 43 (1901).

Effect of Certificate of Ratification. — The usual certificate of ratification is conclusive only of the fact of ratification, but not of a compliance with this section of the Constitution. Smathers v. Commissioners, 125 N. C. 480, 34 S. E. 554 (1899).

V. SUBSTITUTED BILLS—AMENDMENTS.

Substituted Bill.—Where a bill, authorizing a levy of taxes for road purposes, has been read, referred to a committee, and the committee has recommended a substitute, resulting in the tabling of the original bill and the passing of the substitute on two separate days in that branch of legislation, and otherwise conforming to the requirements of this section, in both branches of legislation, the substitute is to be regarded, in the contemplation of the Constitution, as an amendment to the original bill introduced, and the act may not successfully be questioned as not having passed on the several separate days required of a bill of this character. Edwards v. Commissioners, 183 N. C. 58, 110 S. E. 600 (1922).

Where a valid charter of a municipality authorizing the issuance of its bonds has been subsequently amended with regard thereto, but upon condition that the proposition be submitted to the voters, which was never done, and the legislature attempts to pass a still later law amending

the former act but which has not been done in accordance with the requirements of this section, the later acts are of no effect, leaving the charter of the town as to these provisions open, under the terms of which the bonds may yet be issued. Cottrell v. Lenoir, 173 N. C. 138, 91 S. E. 827 (1917).

Validation by Later Act.—Where a statute, pledging the faith and credit of the State in issuing State bonds, has not been passed in accordance with the provisions of this section is therefore invalid, its invalidity may be cured by a later statute passed as the Constitution requires, referring to the former statute, and supplying the omissions, and the bonds thereunder issued after the question has been submitted to and approved by the voters of the State, as the statute required, are valid. Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927).

When Amendment Will Affect Constitutionality. — An act passed in accordance with this section is not rendered invalid by an amendment not passed in accordance with the constitutional provision, when it does not affect the taxing or other financial features of the act, or increase either the taxes or impose any additional burden on the taxpayer. Wagstaff v. Central Highway Commission, 174 N. C. 377, 93 S. E. 908 (1917).

No Change Effected.—Where the legislature has passed an act authorizing a county to pledge its faith and credit in the issuance of bonds upon its several readings, upon its aye and no vote in accordance with this section, and by later ratification of an act requiring the question to be submitted to the qualified voters: Held, it is not required that the later ratified act be also passed in accordance with the constitutional requirement, and in the absence of a proper election, the bond issue will be declared invalid. Graham County v. Terry & Co., 194 N. C. 22, 138 S. E. 443 (1927).

Where the legislature has passed an act authorizing a county to issue bonds according to the provisions of this section it is within its power to add a provision that the question be first submitted to the electorate of the county. Graham County v. Terry & Co., 194 N. C. 22, 138 S. E. 443 (1927).

No Presumption of Materiality.—Where the journal does not show the effect of the amendment there is no presumption that it was material. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

Evidence of Materiality.—Slips of paper attached by a rubber band to the cover of the original bill when it was engrossed are not admissible in determining whether an amendment was material. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

Material Amendment. — A material amendment made by one branch of the legislature to a bill passed by the other, allowing a county to pledge its credit in issuing bonds for the improvement of the highways therein, must be concurred in according to the requirements of this section. Glenn v. Wray, 126 N. C. 730, 36 S. E. 167 (1900); Caywell v. Commissioners, 173 N. C. 657, 92 S. E. 481 (1917). This rule applies with greater force, when the amendment is by separate act. Guire v. Com'rs, 177 N. C. 516, 99 S. E. 430 (1919).

An amendment which made a material change in the valid act it proposed to amend is unconstitutional, and the commissioners are without authority to levy the tax specified in the later act. Township Road Commissioners v. Commissioners, 178 N. C. 61, 62, 100 S. E. 122 (1919).

Same—Increasing Interest Rate. — An amendment to an act authorizing a county to issue bonds for road construction, which increases the rate of interest from 5 per cent to 6 per cent, is to effect a material change in the former law. Guire v. Commissioners, 177 N. C. 516, 99 S. E. 430 (1919).

Same—Increasing Tax Rate.—When an act has been passed by the legislature authorizing a graded school district to vote on the question of issuing school bonds in a certain amount, and amended at a subsequent session so as to authorize bonds to a larger amount and to run a longer time, both acts having been passed upon their several readings, with aye and no vote according to this section, an issue of bonds under a still later and similar act for a larger amount and upon a greater rate of taxation is invalid in toto when the later act is not likewise passed in accordance with this section. Russell v. Troy, 159 N. C. 366, 74 S. E. 1021 (1912).

The bonds are invalid even as to the amount authorized to be issued under the valid act, for that amount was only authorized at a less rate of taxation, etc., as to which the voters upon the proposition have not assented. Russell v. Troy, 159 N. C. 366, 74 S. E. 1021 (1912).

Same—Curtailing Territory to Which Applicable.—Where a bill is introduced in one branch of the legislature for the issuance of bonds, and amendments have been made by the other branch, withdrawing certain of the more wealthy and popular townships from the liability for the indebt-

edness to be created, except under condition requiring the approval of the voters, the amendment is a material one, requiring for the validity of the act that it be passed in accordance with the requirements of this section. Claywell v. Commissioners, 173 N. C. 657, 92 S. E. 481 (1917).

But an act empowering special school districts of the State to issue bonds which followed the requirements of this section except that upon its last reading, by amendment, it was made to apply only to one district in the State, the effect of the amendment being to exclude the other districts, and the act being regularly enacted as to the one district retained, is valid as to that district. Gregg v. Commissioners, 162 N. C. 479, 78 S. E. 301 (1913).

Immaterial Amendment.—When an act has been passed in accordance with this section, an amendment, which does not increase the amount of the bonds or the taxes to be levied or otherwise materially change the original bill, may be adopted by the concurrence of both houses of the General Assembly. Commissioners v. Stafford, 138 N. C. 453, 50 S. E. 862 (1905).

An amendment which does not increase the amount of the bonds or tax to be levied, or otherwise materially change the bill is immaterial. Gregg v. Commissioners, 162 N. C. 479, 78 S. E. 301 (1913).

It is only when a material amendment is affected that a rereading is necessary. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

Same—Substituting Name of Commissioner. — An amendment in the second branch of the legislature substituting the name of a commissioner does not broaden the scope of the act or affect its financial feature, and the failure in the first branch to comply with this section will not alone affect its validity. Brown v. Commissioners, 173 N. C. 598, 92 S. E. 502 (1917).

Same—Change in Caption.—A slightly different caption retaining the number of the original bill is an immaterial amendment. Brown v. Commissioners, 173 N. C. 598, 92 S. E. 502 (1917).

Materiality a Judicial Question.—Whether an amendment is material and required to be passed in accordance with this section is a question of law for the court, under the facts, and not controlled by an agreement between the parties. Wagstaff v. Central Highway Commission, 174 N. C. 377, 93 S. E. 908 (1917).

§ **15. Entails.**—The General Assembly shall regulate entails in such a manner as to prevent perpetuities. (Const. 1868.)

§ **16. Journals.**—Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly. (Const. 1868.)

Cited in Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

§ **17. Protest.**—Any member of either house may dissent from, and protest against, any act or resolve which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journal. (Const. 1868.)

Cited in Tenney v. Brandhove, 341 U. S. 367, 95 L. Ed. 1019, 71 S. Ct. 783 (1951).

§ **18. Officers of the House.**—The House of Representatives shall choose their own speaker and other officers. (Const. 1868.)

This is the only express grant of appointing power to the House of Representatives. People v. McKee, 68 N. C. 429 (1873).

§ **19. President of the Senate.**—The Lieutenant-Governor shall preside in the Senate, but shall have no vote unless it may be equally divided. (Const. 1868.)

§ **20. Other senatorial officers.**—The Senate shall choose its other officers and also a speaker (pro tempore) in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor. (Const. 1868.)

This is the only express grant of appointing power to the Senate. People v. McKee, 68 N. C. 429 (1873).

§ 21. **Style of the acts.**—The style of the acts shall be. "The General Assembly of North Carolina do enact." (Const. 1868.)

§ 22. **Powers of the General Assembly.**—Each house shall be 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. (Const. 1868.)

Effect of Section. — This section withdraws from the consideration of our courts the question of title involved in a contest for a seat in the General Assembly. State v. Pharr, 179 N. C. 699, 103 S. E. 8 (1920); Bouldin v. Davis, 197 N. C. 731, 150 S. E. 507 (1929).

§ 23. **Bills and resolutions to be read three times, etc.**—All bills and resolutions of a legislative nature shall be read three times in each house before they pass into laws, and shall be signed by the presiding officers of both houses. (Const. 1868.)

Necessity of Signature.—The signatures of the presiding officers, by the Constitution, must be affixed to an act of legislation during the session of the General Assembly, and are necessary to its completeness and efficacy. Scarborough v. Robinson, 81 N. C. 409 (1879).

Where an office was created by an act of the General Assembly which was not signed by the presiding officers until three days later, an election in the interim to fill such office was void. State v. Meares, 116 N. C. 582, 21 S. E. 973 (1895).

The judicial power can not be exercised in aid of an unfinished and inoperative act, so left upon the final adjournment, any more than in obstructing legislative action. Scarborough v. Robinson, 81 N. C. 409 (1879).

In the absence of the signature journals are not competent to prove compliance with this section. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

Effect of Signature.—When an act is certified to by the speakers as having been ratified, it is conclusive of the fact that it was read three several times in each house and ratified. Union Bank v. Commissioners, 119 N. C. 214, 25 S. E. 966 (1896).

The usual certificate of ratification is conclusive only of the fact of ratification, but not of a compliance with Art. II, § 14, of the Constitution. Smathers v. Commissioners, 125 N. C. 480, 34 S. E. 554 (1899); Commissioners v. DeRossett, 129 N. C. 275, 40 S. E. 43 (1901).

Effect of Certificate.—The certificate is not sufficient to show that the bill was passed in compliance with § 14 of this article. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

But the signature is conclusive of passage according to this section. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

And the journals are not admissible to contradict such signature. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E. 433 (1927).

Cited in Russell v. Ayer, 120 N. C. 180, 27 S. E. 133 (1897); Commissioners v. Snuggs, 121 N. C. 394, 28 S. E. 539 (1897); State v. Patterson, 134 N. C. 612, 47 S. E. 808 (1904).

§ 24. **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. (Const. 1868.)

§ 25. **Terms of office.**—The terms of office for senators and members of the house of representatives shall commence at the time of their election. (Const. 1868; Convention 1875.)

Editor's Note.—Section 27 of the Constitution of 1868 was as follows: "The terms of office for Senators and members of the House of Representatives shall commence at the time of their election; and the term of office of those elected at the first election held under this Constitution shall terminate at the same time as if they had been elected at the first ensuing regular election." The Convention of 1875 omitted the last clause, and the remainder became § 25 of the present Constitution.

§ 26. Yeas and nays.—Upon motion made and seconded in either house by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journals. (Const. 1868.)

§ 27. 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 places where they are now held, or may be directed hereafter to be held, in such manner as may be prescribed by law, on the first Thursday in August, in the year one thousand eight hundred and seventy, and every two years thereafter. But the General Assembly may change the time of holding the elections. (Const. 1868; Convention 1875.)

Editor's Note.—See Legislative Term of Office, 64 N. C. 785.

This section constituted the first part of § 29 of the Constitution of 1868. The following additional sentence of § 29 was omitted by the Convention of 1875: "The first election shall be held when the vote shall be taken on the ratification of this Constitution by the voters of the State, and the General Assembly then elected shall meet on the fifteenth day after the approval thereof by the Congress of the United States, if it fall not on Sunday, but if it shall so fall, then on the next day thereafter; and the members then elected shall hold their seats until their successors are elected at a regular election." Under authority of this section, the General Assembly changed the time of holding the election to Tuesday next after the first Monday in November, c. 275, Public Laws of 1876-77.

§ 28. Pay of members and presiding officers of the General Assembly.—The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of fifteen dollars per day for each day of their session, for a period not exceeding ninety days; and should they remain longer in session they shall serve without compensation. The compensation of the presiding officers of the two houses shall be twenty dollars per day for a period not exceeding ninety days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days. (Convention 1875, 1927, c. 203; 1949, c. 1267.)

Editor's Note.—This section, which was added to the Constitution by the Convention of 1875, was amended by vote of the people at the general elections of November 6, 1928, and November 7, 1950. Prior to the first amendment the members and officers of the General Assembly were paid a per diem and given a mileage allowance. The amendment provided for a regular salary and also for per diem compensation in case of an extra session. The second amendment returned the compensation to a per diem basis.

The amendment of this section proposed by Session Laws 1947, c. 361, failed of adoption at the general election held on November 2, 1948.

Special Committee of Investigation.—Inasmuch as the per diem of members of the General Assembly is allowed only while in session, the members of a legislative committee appointed to investigate certain facts and report to the General Assembly before its adjournment if possible, otherwise to the superior court, are not entitled to per diem for services rendered after adjournment when the resolution appointing them only provided for the necessary expenses of the committee while engaged in the investigation. Commercial, etc., Bank v. Worth, 117 N. C. 147, 23 S. E. 160 (1895).

Cited in Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15 (1919) (dis. op.).

§ 29. Limitations upon power of General Assembly to enact private or special legislation.—The General Assembly shall not pass any local, private, or special act or resolution relating to the establishment of courts inferior to the Superior Court; relating to the appointment of justices of the peace; relating to health, sanitation, and 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 nonnavigable streams; relating to cemeteries; relating to the pay of jurors; erecting new townships, or changing township lines, or establishing or

changing the lines of school dictricts; 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; nor shall the General Assembly enact any such local, private or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private or special laws enacted by it. Any local, private or special act or resolution passed in violation of the provisions of this section shall be void. The General Assembly shall have power to pass general laws regulating matters set out in this section. (1915, c. 99.)

This section is remedial in its nature and was intended not only to free the legislature of petty detail but also to require uniform and coördinated action under general laws in regard to the matters therein stipulated which are related to the welfare of the people of the whole State, and the application of the section should not be denied on any unsubstantial distinction which would defeat its purpose. Board of Health v. Board of Com'rs, 220 N. C. 140, 16 S. E. (2d) 677 (1941), holding Pub. Laws 1941, chs. 6 and 193 to be local laws relating to health.

In adopting this section, the people were motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than as a conglomeration of innumerable discordant communities. To prevent this laudable desire from degenerating into a mere pious hope, they decreed in emphatic and express terms that "any local, private, or special act or resolution passed in violation of the provisions of this section shall be void," no matter how praiseworthy or wise such local, private, or special act or resolution may be. Idol v. Street, 233 N. C. 730, 65 S. E. (2d) 313 (1951).

What Are Local Laws.—The interpretation of a statute, as to whether it is a local one, prohibited by this section of our Constitution should be largely left to the facts and circumstances of each particular case, giving significance to the rule that legislative acts are presumed to have been rightfully passed from proper motives, and that a classification of this kind, when made by them, should not be disturbed unless it is manifestly arbitrary and invalid. In re Harris, 183 N. C. 633, 112 S. E. 425 (1922).

A "local act" is one operating only in a limited territory or specified locality. Idol v. Street, 233 N. C. 730, 65 S. E. (2d) 313 (1951).

In no sense is the filing fee required by § 163-120 and § 163-129 a local law as condemned by this section. McLean v. Durham County Board of Elections, 222 N. C. 6, 21 S. E. (2d) 842 (1942).

Courts Look beyond Form of Statutes.—In determining whether a statute relating to matters enumerated in this section is a "local, private, or special" act inhibited by this section or a "general law" which the General Assembly has the "power to pass," the courts will look beyond the form of the act and ascertain whether the statute, in fact, is generally and usually applicable throughout the area comprising the State. State v. Dixon, 215 N. C. 161, 1 S. E. (2d) 521 (1939).

Scope of Legislative Power.—See generally Webb v. Port Comm., 205 N. C. 663, 172 S. E. 377 (1934).

Establishment of Recorders' Courts.—A general law permitting the establishment of recorders' courts in the State, excepting certain counties to the number of 44, leaving 56 within the provisions of the statute, is not a local law within the intent and meaning of this section nor is a statute amending the former general law taking a certain county and two others out of the excepted class enumerated in the general statutes, unconstitutional as a local or special act as to those counties, the effect of this statute being a re-enactment of the general law including the particular counties. In re Harris, 183 N. C. 633, 112 S. E. 425 (1922).

Chapter 286, Public-Local Laws of 1925, providing for the establishment of township recorder's courts in one specified county is unconstitutional and void as being a local act relating to the establishment of courts inferior to the superior court, prohibited by this section. State v. Williams, 209 N. C. 57, 182 S. E. 711 (1935).

Court Created Prior to Adoption of Section.—Since this section forbidding the passage of "any local, private, or special act or resolution relating to the establishment of courts inferior to the superior court" did not become a part of the Constitution of North Carolina until it was

adopted by the qualified voters of the State in the general election in 1916, the General Assembly in 1913 acted within constitutional limits in creating the special court of North Wilkesboro by private act. In re Wingler, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

Increasing Jurisdiction of Certain Court. —An act which authorizes the county commissioners to increase the jurisdiction of a certain recorder's courts in civil matters is unconstitutional. Durham Provision Co. v. Daves, 190 N. C. 7, 128 S. E. 593 (1925).

Same—Courts Already Established. — This section does not apply to increasing the jurisdiction of such courts as are already established. State v. Horne, 191 N. C. 375, 131 S. E. 753 (1926).

Same—Effect on Emoluments.—Where the legislature, in contravention of this section of the Constitution of this State, has established a court inferior to the superior court, an incumbent judge thereof, duly elected, may not successfully contend that he was deprived of the emoluments of his office by an unconstitutional statute abolishing the court. Queen v. Commissioners, 193 N. C. 821, 138 S. E. 310 (1927).

Erection of Hospital.—An act authorizing a certain county to erect a tuberculosis hospital and issue bonds therefor, and provide a tax for its maintenance, upon the approval of the voters, is both a special and local act and void under this section. Armstrong v. Board, 185 N. C. 405, 117 S. E. 388 (1923).

National Park Act. — The provisions of the statute (Laws 1927, c. 48) for the acquisition of lands for a national park affects the interest of the people of the State, and though local as to location, is for a public use in contemplation of its acquisition by the State for the purpose outlined in the act. Yarbrough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928).

Extending Limits of School.—It is true that the boundaries of a "district" may be coterminous with those of a city or town but it does not follow that an act extending the limits of a city or town in which public schools may be maintained is necessarily a special act establishing or changing the lines of school districts in violation of the constitutional provision. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Sanitary Districts.—An act of the Legislature (Private Laws 1927, c. 229) attempting to create a sanitary district within certain lines within a county for the construction and maintenance of sewer and water systems with certain assessments or taxing powers for the purpose is void, being in violation of the provisions of this section. Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530 (1928).

Building Bridges.—A legislative enactment relating to the building of bridges by a county over a nonnavigable stream or river does not necessarily come within the purview and control of this section Mills v. Commissioners, 175 N. C. 215, 95 S. E. 481 (1918).

While authority given by statute to a county or other political agency of a state, to issue bonds for highways in aid to their maintenance or construction is not direct, local or special legislation as is prohibited by this section, it is otherwise where the statute directs the building of a bridge at a specified place across a stream between two counties, and as an incident permits the issuance of bonds or the levying of taxes for the purpose, pledging the faith and credit of the State. Day v. Commissioners, 191 N. C. 780, 133 S. E. 164 (1926).

Maintenance of Streets within City Limits.—The unlimited power in the General Assembly to provide for the creation and extension of corporate limits of municipal corporations, would seem to include the right to vest in such municipal corporations the authority to levy taxes to lay out and maintain highways and streets within such limits, since they are essential to the existence of such corporations, and such private act would not seem to contravene this section. Matthews v. Blowing Rock, 207 N. C. 450, 177 S. E. 429 (1934).

Formation of Sewerage Districts. — A statute authorizing the formation of sanitary sewerage districts within county-wide limits, the boundaries of these to be fixed by certain designated local authorities in a specified manner, and done without previous notice to the voters, the statute is not a "local, private or special act relating to health, sanitation, etc." Reed v. Howerton Engineering Co., 188 N. C. 39, 123 S. E. 479 (1924).

Drainage District. — A statute creating and designating the boundaries of a drainage district and providing taxation for its construction and maintenance is for a necessary purpose and does not fall within the purview of Art. VII, § 7, requiring its submission to the voters within the district, nor is it a local, private or special act relating to health or sanitation inhibited by this section. Kenilworth v. Hyder, 197 N. C. 85, 147 S. E. 736 (1929).

Establishing or Changing Lines of School Districts.—Since the enforcement

of this section, special act of the legislature to establish or change the lines, etc., of a school district, and any proceedings under it, are null and void. Galloway v. Board, 184 N. C. 245, 114 S. E. 165 (1922).

A statute which lays off or defines by boundary a certain territory as a graded school district within a county, and provides for an issue of bonds upon the approval of the voters therein, for the necessary buildings and maintenance, comes within the provision of this section. Board v. Mutual Loan, etc., Co., 181 N. C. 306, 107 S. E. 130 (1921).

This section prohibits the legislature from passing any special, private or local act which ex proprio vigore undertakes to establish or change the boundaries of a school district, but this section does not proscribe the legislature from setting up machinery under which a county, as the administrative unit charged with making provisions for necessary capital outlay, may create school districts or special bond tax units within the county to accomplish this purpose, and therefore c. 279, Public-Local Laws of 1937, which provides the machinery under which the county of Buncombe may establish school districts or special bond tax units in the county, is not in contravention of this section. Fletcher v. Collins, 218 N. C. 1, 9 S. E. (2d) 606 (1940); Hinson v. Board of Com'rs, 218 N. C. 13, 9 S. E. (2d) 614 (1940).

Same—Creation of Public School District. — A statute which creates a public school district and allows a bond issue, upon the approval of voters, for its equipment and maintenance, is a local or special act, prohibited by this section. Robinson v. Board, 182 N. C. 590, 109 S. E. 855 (1921).

Same—Incorporation of Existing Districts.—Incorporating existing local school districts for all purposes relating to the issuance or payment of bonds upon the approval of the voters of a district, is valid, and not in contravention to this section. Board v. Mutual Loan, etc., Co., 181 N. C. 306, 107 S. E. 130 (1921); Paschal v. Johnson, 183 N. C. 129, 110 S. E. 841 (1922).

Same—Increase of Bonds by Existing District. — Where a school district has been defined as to its boundaries, etc., and created under the provisions of a statute valid before the adoption of the amendment to our State Constitution, this section, and which authorized a bond issue in a certain sum, a statute passed since the adoption of this constitutional amendment authorizing an increase of the bonds to be issued, upon the approval of the voters according to the statutory amendment, does not contravene the provision of this section. Roebuck v. Board, 184 N. C. 144, 113 S. E. 676 (1922).

Same—Recognizing School District in Changed City Limits.—A public-local act that enlarged the city limits and recognized therein the independent existence of a public-school district within the former limits is not contrary to the provisions of our recent amendment to our Constitution, this section, as an attempt to establish a school district, or to change the limits of those already established. Duffy v. Greensboro, 186 N. C. 470, 120 S. E. 53 (1923).

Same—Submitting Question of Taxation.—A statute allowing an existing consolidated school district to submit the question of taxation and the issue of bonds for school purposes to the district is not prohibited by this section. Burney v. Bladen County, 184 N. C. 274, 114 S. E. 298 (1922).

Providing for Sewer and Water Service for Local School Children.—Chapter 1075, Session Laws 1951, is a local or special act. It relates only to Randolph County, and in Randolph County affects only a single agency, the county board of education. It relates to health and sanitation, since its sole purpose is to prescribe provisions with respect to sewer and water service for local school children in Randolph County. It purports to limit the power of the county board of education to provide for sanitation and healthful conditions in the schools by means of a sewerage system and an adequate water supply. These things being true, this statute is invalid under the mandatory terms of this section. Lamb v. Randolph County Board of Ed., 235 N. C. 377, 70 S. E. (2d) 201 (1952).

Creating and Naming County Health Board. — Chapter 322, Public-Local Laws of 1931, which undertakes to create and name the members of a county board of health for Madison County alone, which board is charged with the duty to inspect county institutions and see that they are kept in a sanitary condition, and to select a physician to vaccinate against disease, is a local act relating to health and sanitation prohibited by this section. Sams v. Board of Com'rs, 217 N. C. 284, 7 S. E. (2d) 540 (1940).

Authorizing Consolidation of City and County Health Departments.—

Chapter 86, Session Laws 1945, which attempts to authorize Forsyth County and Winston-Salem to consolidate their health departments and name a joint city-county board of health and appoint joint city-county health officers, and which expressly

repeals to the extent of any conflict all laws in conflict therewith, is a local act relating to health, and is void for repugnancy to this section. Idol v. Street, 233 N. C. 730, 65 S. E. (2d) 313 (1951).

Fair Trade Act.—The North Carolina Fair Trade Act, in limiting its application to commodities bearing a trademark and in exempting from its operation such commodities when sold to particular classes of persons, sets up reasonable classifications and applies uniformly to all persons or things coming therein, and therefore is a general act regulating trade and does not contravene this section. Lilly & Co. v. Saunders, 216 N. C. 163, 4 S. E. (2d) 528, 125 A. L. R. 1308 (1939).

Machinery to Effect Void Act.—Where an act to create a public school district is unconstitutional, because it violates this section, the provision for bonds and taxation to carry out the purpose of the act are likewise void. Sechrist v. Commissioners, 181 N. C. 511, 107 S. E. 503 (1921).

Poll Tax for School Purposes Unconstitutional.—Since the adoption of this section a special school district may not impose a tax upon the polls for school purposes; and where a poll tax and a property tax have both been favorably voted for at an election held for the purpose, the tax upon the poll will be held unconstitutional and the property tax upheld by the courts. Board v. Bray, 184 N. C. 484, 115 S. E. 47 (1922).

Ratifying Ordinance to Issue Bonds.—An act for the purpose of ratifying an ordinance, of county commissioners, to issue bonds and levy taxes for school purposes passed since the adoption of this section of the Constitution, is a local, private, or special act thereby prohibited; and the issuance of such bonds and levy of such taxes, will be permanently enjoined. Woosley v. Commissioners, 182 N. C. 429, 109 S. E. 368 (1921).

Trade, in its broadest sense, includes any employment or business engaged in for gain or profit. State v. Dixon, 215 N. C. 161, 1 S. E. (2d) 521 (1939).

A statute providing for the licensing and regulations of real estate brokers and salesmen and imposing a license tax on those engaged in the trade in addition to the tax imposed by the Revenue Act for a State-wide license, was held applicable to only a limited territory and specified localities, and the act was therefore a local act regulating trade in contravention of this section. State v. Dixon, 215 N. C. 161, 1 S. E. (2d) 521 (1939).

Maintenance of County Highways. — A public-local law applicable to the maintenance of the public highways of a county and authorizing taxation or issuance of bonds for this purpose, with certain specific supervision and control, is not such local or special act as falls within the inhibition of this section, where it does not affect the "laying out, opening, altering, maintaining or discontinuing" the then existing highways, etc. State v. Kelly, 186 N. C. 365, 119 S. E. 755 (1923).

Closing Public Roads.—Part of land in a private development was added to the playground of a public school. The General Assembly, by private act (c. 72, Private Laws of 1933), declared that certain roads dedicated in the registered plot of the development were no longer needed, and declared that the roads should be closed and added to the playground space for the school. This act is void as being a private or special act inhibited by this section. Glenn v. Board of Education, 210 N. C. 525, 185 S. E. 781 (1936).

Chapter 216, Priv. Laws, 1925, is not a special statute relating to roads inhibited by this section, the act not relating to the laying out, opening, altering, or discontinuance of any particular and designated highway, street, or alley. Deese v. Lumberton, 211 N. C. 31, 188 S. E. 857 (1936).

Substitution of Road Control.—A statute that abolishes two boards of road commissioners in a county and gives to another board, created by the same act, entire control and management of the public roads and bridges of the county, does not violate this section of our State Constitution. Honeycutt v. Commissioners, 182 N. C. 319, 109 S. E. 4 (1921).

A public-local law authorizing the commissioners of a county to take over a specified highway within the county, constituting one of the principal highways within the county, connecting two important State highways, transferring to the said commissioners the bridges of the various townships for their care and supervision, is not violative of this section. Hill v. Commissioners, 190 N. C. 123, 129 S. E. 154 (1925). See Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936).

Issuance of County Road Bonds. — An act of the legislature authorizing the road commissioners of a county to issue bonds, upon the approval of its electors, to obtain moneys for the expenditure upon certain particularly designated objects in respect to its public roads, and which does not contain any provision for the laying out, altering or discontinuing any road or highway, does not contravene this section. Road Commissioners v. Bank, 181 N. C. 347, 107 S. E. 245 (1921).

An act of the legislature authorizing the issuance of county bonds for public roads is not in contravention of this section of the Constitution. Commissioners v. Wachovia Bank & Trust Co., 178 N. C. 170, 100 S. E. 421 (1919).

An act of the legislature authorizing the road commissioners of a county to issue bonds, upon the approval of its electors, to obtain moneys for the expenditure upon certain particularly designated objects in respect to its public roads, and which does not contain any provision for the laying out, altering or discontinuing any road or highway, does not contravene this section. Road Commissioners v. Bank, 181 N. C. 347, 107 S. E. 245 (1921).

Same—May Provide for Distributor of Fund.—An act of the legislature may prescribe a rule by which the proceeds of the sales of bonds it authorizes a county to issue for road purposes, shall be disbursed and distributed in order to effect the best results, when it is confined to the control and management of the funds, and leaves to the local authorities the power given them by this section over "the laying out, opening, or discontinuance of highways." Commissioners v. Pruden & Co., 178 N. C. 394, 100 S. E. 695 (1919).

Collection of Tax Liens.—An act relating to establishment and collection of tax liens, which applies to only one county of the State, is void as a violation of this section. Wake Forest v. Holding, 207 N. C. 808, 178 S. E. 594 (1935).

Municipal Board of Control is a creature of the General Assembly within the provisions of this section. Hunsucker v. Winborne, 223 N. C. 650, 27 S. E. (2d) 817 (1943).

Statute including deputy sheriffs within term "employee" as used in Workmen's Compensation Act (G. S § 97-2) held consonant with the provisions of this section. Towe v. Yancey County, 224 N. C. 579, 31 S. E. (2d) 754 (1944).

Applied in Sprunt v. Hewlett, 208 N. C. 695, 182 S. E. 655 (1935) (dis. op.).

Cited in Edgerton v. Hood, 205 N. C. 816, 172 S. E. 481 (1934); Albertson v. Albertson, 207 N. C. 547, 178 S. E. 352 (1935); Newman v. Watkins, 208 N. C. 675, 182 S. E. 453 (1935); Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941); State v. High, 222 N. C. 434, 23 S. E. (2d) 343 (1942); Reidsville v. Slade, 224 N. C. 48, 29 S. E. (2d) 215 (1944); State v. Mitchell, 225 N. C. 42, 33 S. E. (2d) 134 (1945); Roberts v. McDevitt, 231 N. C. 458, 57 S. E. (2d) 655 (1950).

§ **30. Inviolability of sinking funds.**—The General Assembly shall not use nor authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which said sinking fund has been created. (Ex. Sess. 1924, c. 91.)

Sum Erroneously Placed in Sinking Fund.—While sinking funds provided for the retirement of municipal bonds may not be diverted from that purpose to other municipal requirements by a city, a sum erroneously placed on the books of the city in a sinking fund by a clerk without authorization, which sum was actually derived from profits from the municipal electric plant, does not fall within the constitutional or statutory inhibitions, and the city may by ordinance correct the error of the clerk and use the funds for other lawful municipal purposes. Mewborn v. Kinston, 199 N. C. 72, 154 S. E. 76 (1930).

Expenditure of Surplus Unencumbered Funds.—Although the General Assembly cannot authorize a diversion of a county's sinking funds which are necessary to pay outstanding sinking fund bonds, it can direct the expenditure of surplus unencumbered sinking funds, provided the expenditure is for a public purpose Johnson v. Marrow, 228 N. C. 58, 44 S. E. (2d) 468 (1947).

§ **31. Use of funds of Teachers' and State Employees' Retirement System restricted.**—The General Assembly shall not use, or authorize to be used, nor shall any agency of the State, public officer or public employee use or authorize to be used the funds, or any part of the funds, of the Teachers' and State Employees' Retirement System except for Retirement System purposes. The funds of the Teachers' and State Employees' Retirement System shall not be applied, diverted, loaned to or used by the State, any State agency, State officer, public officer or employee except for purposes of Retirement System: Provided, that nothing in this section shall prohibit the use of said funds for the payment of benefits, administrative expenses and refunds as authorized by the Teachers' and State Employees' Retirement Law, nor shall anything in this

provision prohibit the proper investment of said funds as may be authorized by law. (1949, c. 821.)

Editor's Note.—This section was adopted by vote at the general election of November 7, 1950.

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 vested the supreme executive power of the State; a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance, who 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 term of office shall commence on the first day of January next after their election, and continue until their successors are elected and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January. (Const. 1868; 1872-73, c. 84; 1943, c. 57.)

Cross Reference. — See Art. 1, § 8 and note thereto.

Editor's Note.—In this section as found in the Constitution of 1868, the words "a Superintendent of Public Works" followed "Treasurer". These words were stricken out and the office of Superintendent of Public Works abolished pursuant to c. 84, Public Laws of 1872-73.

The amendment of this section, adopted by vote at the general election of November 7, 1944, made the Commissioner of Agriculture, the Commissioner of Labor, and the Commissioner of Insurance constitutional officers.

Duty of Governor. — The Governor as the constituted head of the executive department is charged with the duty of seeing that legislative acts are carried into effect. Winslow v. Morton, 118 N. C. 487, 24 S. E. 417 (1896).

Stated in Galloway v. Department of Motor Vehicles, 231 N. C. 447, 57 S. E. (2d) 799 (1950).

Cited in People v. McKee, 65 N. C. 257 (1871); Pemberton v. McRae, 75 N. C. 497 (1876); Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899).

§ 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. (Const. 1868.)

§ 3. Returns of elections.—The return 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. (Const. 1868; 1925, c. 88.)

Editor's Note.—In the Constitution of 1868, that portion of this section after the word "directed" and before "contested" read as follows: "to the Speaker of the House of Representatives, who shall open and publish the same in the presence of a majority of the members of both houses of the General Assembly. The persons having the highest number of votes respectively, shall be declared duly elected; but

if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint-ballot of both Houses of the General Assembly." The section was amended to its present form pursuant to c. 88, Public Laws of 1925. For the laws governing the canvassing of returns, see §§ 163-93 through 163-106; c. 260, Public Laws of 1927.

Where Returns Have Been Acted on.—In a proceeding to compel by mandamus a reassembling of a board of county canvassers and a recount of the votes cast in the county for candidates for the House of Representatives, where, since the institution of the action, the board of State Canvassers has acted upon the returns transmitted to them, and issued a commission to the person elected on the face of the return, judicial action in the premises would be wholly unavailing, as the matter has passed beyond the jurisdiction of the court. O'Hara v. Powell, 80 N. C. 104 (1879).

§ **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. (Const. 1868.)

§ **5. Duties of Governor.**—The Governor shall reside at the seat of government of this State, and he shall, from time to time, give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient. (Const. 1868.)

Cited in Watson v. North Carolina R. Co., 152 N. C. 215, 67 S. E. 502 (1910).

§ **6. Reprieves, commutations, and pardons.**—The Governor shall have the power to grant reprieves, commutations 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 relative to the manner of applying for pardons. He shall biennially communicate to the General Assembly each case of reprieve, commutation, 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, pardon, or reprieve, and the reasons therefor. (Const. 1868; 1872-73, c. 82.)

Proposed Amendment.—Session Laws 1953, c. 621, proposed that this section be amended by adding the following sentences at the end thereof: "The terms reprieves, commutations and pardons shall not include paroles. The General Assembly is authorized and empowered to create a Board of Paroles, provide for the appointment of the members thereof, and enact suitable laws defining the duties and authority of such Board to grant, revoke and terminate paroles. The Governor's power of paroles shall continue until July 1, 1955, at which time said power shall cease and shall be vested in such Board of Paroles as may be created by the General Assembly."

Editor's Note.—The word "biennially" was substituted for "annually" in this section of the Constitution of 1868, pursuant to c. 82, Public Laws of 1872-73.

For article on punishment for crime in North Carolina, see 17 N. C. Law Rev. 205.

Power to Pass Amnesty Act. — The power, granted by this section, to exercise clemency after conviction in some particular case and in favor of an individual especially charged with the offense, is an executive act of a quasi-judicial kind, and does not conflict with or exclude the power of the General Assembly to pass an amnesty act in abolition or oblivion of the offense. State v. Bowman, 145 N. C. 452, 59 S. E. 74, 122 Am. St. Rep. 464 (1907).

The Governor may grant a pardon upon a condition precedent that the prisoner pay costs of trial; and upon condition subsequent, that he remain of good character, and be sober and industrious. In re Williams, 149 N. C. 436, 63 S. E. 108, 22 L. R. A. (N. S.) 238 (1908).

Pardon Pending Appeal. — The term "conviction," in this section denotes a verdict of guilty rendered by a jury: Therefore, when defendant, after verdict and judgment in the court below, appealed to the Supreme Court and, pending such appeal, was pardoned by the Governor, such pardon is authorized by this section and is

valid. State v. Alexander, 76 N. C. 231 (1877); State v. Mathis, 109 N. C. 815, 13 S. E. 917 (1891).

After a defendant has begun the service of his term, or at least when that takes place after the adjournment of the court, it is beyond the jurisdiction of the judge to alter it or interfere with it in any way, as the power of pardon, parole or discharge during the term of imprisonment is by this section the exclusive prerogative of the Governor. State v. Lewis, 226 N. C. 249, 37 S. E. (2d) 691 (1946).

Quoted in State v. Casey, 201 N. C. 620, 161 S. E. 81 (1931) (dis. op.).

Stated in State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922).

Cited in State v. Mooney, 74 N. C. 98 (1876); In re McMahon, 125 N. C. 38, 34 S. E. 193 (1899); Herring v. Pugh, 126 N. C. 852, 36 S. E. 287 (1900).

§ 7. **Annual reports from officers of executive department and of public institutions.**—The officers of the executive department and of the public institutions of the State shall, at least five days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed. (Const. 1868.)

Applied in Arendell v. Worth, 125 N. C. 111, 34 S. E. 232 (1899).

Cited in Nichols v. McKee, 68 N. C. 429 (1873); Walker v. Bledsoe, 68 N. C. 457 (1873).

§ 8. **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. (Const. 1868.)

Supremacy of Governor's Control.—Under this section the Governor's control is supreme, in the absence of legislation, "to provide for the organization," etc., of the militia, enacted pursuant to Art. XII, § 3 of this Constitution. Winslow v Morton, 118 N. C. 486, 24 S. E. 417 (1896).

§ 9. **Extra sessions of 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. (Const. 1868.)

§ 10. **Officers whose appointments are not otherwise provided for.**—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 whose appointments are not otherwise provided for. (Const. 1868; Convention 1875.)

Editor's Note. — In the Constitution of 1868 this section prohibited the General Assembly from appointing or electing such officers, as herein provided for, but in 1875 this section was amended and this express prohibition removed.

Construing this and cognate sections of the Constitution of 1868 in reference to vacancies, etc., it was held in various decisions that the term, "unless otherwise provided for," meant unless otherwise provided for by the Constitution itself, and that, except in specified and restricted instances, the legislature had no power to appoint to office or to fill vacancies therein. State v. Stanley, 66 N. C. 60 (1872); Nichols v. McKee, 68 N. C. 429 (1873); Welker v. Bledsoe, 68 N. C. 457 (1873). And see University v. McIver, 72 N. C. 76 (1875). This article and section of the Constitution, as it then existed, and others of kindred nature, were altered by the Convention of 1875. And it has since been the accepted view that, in all offices created by statute, including the directorates of State institutions, the power of appointment, either original or to fill vacancies, is subject to legislative provision as expressed in a valid enactment. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914), citing Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138 (1899); Cherry v. Burns, 124 N. C. 761, 33 S. E. 136 (1899).

Filling Vacancy and Appointing for Regular Term. — The Governor never nominates to the Senate to fill vacancies.

He does that alone, in all cases. But where officers have to be appointed to fill a regular term, then he nominates to the Senate, unless it be an officer who is elected by the people, and then he never nominates to the Senate, but fills the vacancy or term by his own appointment (unless there is an officer holding over), until the people can elect. Battle v. McIver, 68 N. C. 467 (1873), decided prior to 1875 amendment.

Appointment by Governor Limited to Constitutional Officers. — The inherent right of the Governor to appoint is now restricted to constitutional offices and where the Constitution itself so provides. Salisbury v. Croom, 167 N. C. 223, 83 S. E. 354 (1914).

Power of Legislature to Fill Offices.— The Convention of 1875 intended to alter the Constitution as interpreted in Nichols v. McKee, 68 N. C. 429 (1873), and to confer upon the General Assembly the power to fill offices created by statute. State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899), citing Ewart v. Jones, 116 N. C 570, 21 S. E. 787 (1895).

When Legislature Assumes Appointment.—The legislature having assumed to take the appointment of directors for the State of the Western North Carolina Railroad from the Governor, it thereby dispensed with the necessity of his sending nominations of those officers to the Senate and left the Governor to pursue the law as far as he could. Howerton v. Tate, 68 N. C. 546 (1873). See Osborne v. Canton, 219 N. C. 139, 13 S. E. (2d) 265 (1941).

Creation of New Office — Where the General Assembly established a court and, provided that the General Assembly should "elect a person to fill the vacancy in said office, which shall be caused by the ratification of this act," the act was ratified, but the election of plaintiff to fill the office of judge was not held until four days later, and the Governor refused the application of the plaintiff for a commission as judge and appointed the defendant to the office between the time of the ratification of the act and the election of the plaintiff to fill the office, no such vacancy existed as is contemplated in this section. Ewart v. Jones, 116 N. C. 570, 21 S. E. 787 (1895).

Transfer of Duties of Office.—While the General Assembly has the power to abolish an office created by legislative authority, it cannot by mere transfer to others of the duties, connected with an institution, necessary and useful to the public, to be exercised by them, oust the incumbent from an office belonging to him under a contract with the State. State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899).

Trustee's of University, etc.—The trustees of the University and the directors of the penitentiary and of the lunatic asylum were held public officers. Welker v. Bledsoe, 68 N. C. 457 (1873).

Directors of Institution for Deaf, Dumb and Blind.—The directors of the former Institution for the Deaf and Dumb and the Blind were held officers made so by the Constitution. Nichols v. McKee, 68 N. C. 429 (1873).

Superintendent of State Prison. — The place of superintendent of the State Prison, with its attendant duties, was held a public office, not created by the Constitution but by a statute. State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899).

Members of Board of Agriculture. — Members of the Board of Agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment, and are not exclusively, nor of necessity, within the power of executive appointment. Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138 (1899).

Cited in University Railroad Co. v. Holder, 63 N. C. 421 (1869) (con. op.); Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); State v. Baskerville, 141 N. C. 811, 55 S E. 742 (1906); Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15 (1919).

§ 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 receive such compensation as shall be fixed by the General Assembly. (Const. 1868; 1943, c. 497.)

Editor's Note.—The amendment of this section adopted by vote at the general election of November 7, 1944, deleted the former provision that the Lieutenant-Governor, while acting as President of the Senate, should receive the same pay allowed to the speaker of the House of Representatives.

§ 12. In case of impeachment of Governor, or vacancy caused by death or resignation.—In case of the impeachment of the Governor, his failure

to qualify, his absence from the State, 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 disabilities shall cease or a new Governor shall be elected and qualified. In every case in which the Lieutenant-Governor shall be unable to preside over the Senate, the senators shall elect one of their own number president of their body; and the powers, duties and emoluments of the office of Governor shall devolve upon him whenever the Lieutenant-Governor shall, for any reason, be prevented from discharging the duties of such office as above provided, and he shall continue as acting Governor until the disabilities be 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 of the Senate to administer the government, the Secretary of State shall convene the Senate, that they may elect such president. (Const. 1868.)

§ 13. Duties of other executive officers.—The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance 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. (Const. 1868; 1872-73, c. 84; 1943, c. 57.)

Cross Reference.—See Editor's note to Art. III, § 1.

Proposed Amendment.—Session Laws 1953, c. 1033, s. 1 proposed that this section be amended by adding the following to the end of said section: "Provided, that when the unexpired term of any of the offices named in this section in which such vacancy has occurred expires on the first day of January succeeding the next general election, the Governor shall appoint to fill said vacancy for the unexpired term of said office."

Editor's Note.—The amendment adopted by vote at the general election of November 7, 1944, made this section applicable to the Commissioner of Agriculture, the Commissioner of Labor and the Commissioner of Insurance.

Cited in People v. Watson, 72 N. C. 155 (1875); State v. Bullock, 80 N. C. 132 (1879).

§ 14. Council of State.—The Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor and Commissioner of Insurance 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. (Const. 1868; 1872-73, c. 84; 1943, c. 57.)

Editor's Note.—The amendment adopted by vote at the general election of November 7, 1944, made this section applicable to the Commissioner of Agriculture, the Commissioner of Labor and the Commissioner of Insurance.

Cross Reference.—See Editor's note to Art. III, § 1.

§ 15. Compensation for 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 during

the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever. (Const. 1868.)

Editor's Note. — The legislature may designate the compensation of these officials prior to the beginning of their terms and it should follow that the compensation may be declared a certain amount less the income tax on that amount. See § 105-141. And see 11 N. C. Law Rev. 256.

§ **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," signed by the Governor, and countersigned by the Secretary of State. (Const. 1868.)

Countersign Defined.—The verb "countersign" means "to sign on the opposite side" or in addition to the signature of another, and the noun means "the signature of a secretary or other officer to a writing, or writings, added to that by the principal or superior to attest its authenticity." Richards v. Ritter Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911).

Countersignature Need Not Be in Any Particular Place. — Within the intent and meaning of this section it is not required that the Secretary of State "countersign" grants of lands and commissions in any particular place or position thereon, and when a grant to the land in controversy is put in evidence by one of the parties and in all respects appears to be regular and authentic upon its face, it will not be held to be defective because the countersignature of the Secretary of State appears on the opposite side of the sheet from the signature of the Governor. Richards v. Ritter Lumber Co., 158 N. C. 54, 73 S. E. 485 (1911).

§ **17. Department of Agriculture, Immigration, and Statistics.**—The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep husbandry. (Const. 1868; Convention 1875.)

Editor's Note.—Section 17 in the Constitution of 1868 was as follows: "There shall be established in the office of Secretary of State, a Bureau of Statistics, Agriculture and Immigration, under such regulations as the General Assembly may provide." The section was changed to its present form in the Convention of 1875.

Section Mandatory.—This section is not self-executing, but is mandatory upon the legislature. Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138 (1899).

Act Enlarging Board of Agriculture. — An act which enlarges the number of the Board of Agriculture, naming the additional members, is not in conflict with this section. Cunningham v. Sprinkle, 124 N. C. 638, 33 S. E. 138 (1899).

Cited in Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

§ **18. Department of Justice.**—The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State. (1937, c. 447.)

Editor's Note.—The amendment adding this section was proposed by Public Laws 1937, c. 447, and ratified at the next general election. See 17 N. C. Law Rev. 375.

ARTICLE IV

JUDICIAL DEPARTMENT

§ **1. Abolishes the distinctions between actions at law and suits in equity, and feigned issues.**—The distinctions 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 or 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. (Const. 1868.)

Effect of Section. — This section abolished the distinction between actions at law and suits in equity, leaving such rights and remedies to be enforced in the one court, which theretofore had administered simply legal rights. Peebles v. Gay, 115 N. C. 38, 20 S. E. 173 (1894). See Reynolds v. Reynolds, 208 N. C. 578, 182 S. E. 341 (1935).

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, 156 S. E. 494 (1931).

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 (1931).

Feigned Issues. — Under the provisions of this section feigned issues are abolished. Hyatt v. McCoy, 194 N. C. 25, 138 S. E. 405 (1927).

Distinction between Principles Not Abolished.—Equity is now administered in the same courts as matters of law, but the distinction between equitable and legal principles have not been abolished. Waters v. Garris, 188 N. C. 305, 124 S. E. 334 (1924); Furst v. Merritt, 190 N. C. 397, 130 S. E. 40 (1925); Page Trust Co. v. Godwin, 190 N. C. 512, 130 S. E. 323 (1925).

This section abolishing the distinctions between actions at law and suits in equity, does not imply that the distinctions as between law and equity, are abolished. Principles of law, principles and doctrines of equity, remain the same as they have ever been; the change wrought is in the method of administering them and, in some degree, the extent of the application of them. The abolition does not destroy equitable rights and remedies, nor does it merge legal and equitable rights. Scales v. Wachovia Bank, etc., Co., 195 N. C. 772, 143 S. E. 868 (1928).

Equitable Rights Enforced by Civil Action.—Since the passage of this section the enforcement of an equitable right, as that of subrogation, can only be maintained by a civil action. Calvert v. Peebles, 82 N. C 334 (1880).

Rights of Prior Lienor Not Affected.—This section does not affect the rights of a prior lienor by a registered chattel mortgage in favor of a judgment creditor who has sold the personal property by execution under a judgment subsequent to the mortgage lien, or give the creditor a right to levy his execution instead of pursuing the equitable remedy. Rowland Hardware, etc., Co. v. Lewis, 173 N. C. 290, 92 S. E. 13 (1917).

"Criminal Action" and "Indictment" Synonymous.—The term "criminal action" and "indictment" as used in the Constitution, and in the Code are synonymous: Therefore, it would be equally regular to entitle a case upon the records of the court, either as "the People v. A. B.—Criminal action," or the "State v. A. B.—Indictment." State v. Simons, 68 N. C. 378 (1873).

Defendant's Right to Know Nature of Demand. — The necessity for drawing pleadings in civil actions according to a prescribed or established precedent, ceased when the form of suits was abolished by this section. But one who is brought into court to answer a demand for damages or for specific property, has the same fundamental right to know the nature of the demand sufficiently well to enable him, with the aid of competent counsel, to prepare his defense, that he has to be informed of the accusation for which he has to answer criminally. Conley v. Richmond, etc., Ry. Co., 109 N. C. 692, 14 S. E. 303 (1891).

Asking for Ancillary Remedy. — There being but one form of action in civil cases, the fact that a plaintiff asks for one of the many remedies ancillary thereto, to which he is not entitled, does not affect the action itself, which will go on if he is entitled to any other of the remedies. Hargrove v. Harris, 116 N. C. 418, 21 S. E. 916 (1895).

Pleadings Amended by Court.—Where a good cause of action is stated for equitable relief, but defective in form, the court may require the pleadings to be made definite and certain by amendment, the distinction between suits in equity and actions at law as to jurisdictional matters being abolished by this section. Green v. Harshaw, 187 N. C. 213, 121 S. E. 456 (1924).

Justices of the Peace.—This section does not give to courts of justices of the peace jurisdiction over the equity of correcting an account and settlement stated and had between the parties, so as to surcharge or falsify it for fraud or specified error, nor

will the superior court acquire jurisdiction on appeal. Morganton v. Miller, 181 N. C. 364, 107 S. E. 209 (1921).

Enforcement of Contracts.—The remedy for the enforcement of all kinds of contracts is now a civil action. Boles v. Caudle, 133 N. C. 528, 45 S. E. 835 (1903).

This section providing that legal and equitable remedies be administered in the same court, does not abolish the recognized distinction in the principles applicable to each; and an action to enforce the provisions of a contract, being one at law, the equity that time is not the essence of the contract has no application. Makuen v. Elder, 170 N. C. 510, 87 S. E. 334 (1915).

Action for Seduction.—To give this constitutional provision its common sense construction, it would seem that the "feigned issue" in actions for seduction, of a loss of services and for damages based thereon, was abolished, and the action should and does rest on the true issue of damages for the wrong done. Hood v. Sudderth, 111 N. C. 215, 16 S. E. 397 (1892).

This fictitious relation denied to a woman the right to maintain an action under the common law for her seduction. In some of the states the right has been conferred by statute; with us it has been recognized by judicial decision on the theory that feigned issues are abolished and that the woman is the real party in interest. Hyatt v. McCoy, 194 N. C. 25, 138 S. E. 405 (1927).

Action for Money Had and Received.—Under this section an exception to a complaint that by its form it is for money had and received, and that the action cannot be maintained unless the money has been actually received, is untenable. Staton v. Webb, 137 N. C. 35, 49 S. E. 55 (1904).

Action for Claim and Delivery. — There is no such thing as an action for claim and delivery. Under this section there is but one form of action in civil cases. Hargrove v. Harris, 116 N. C. 418, 21 S. E. 916 (1895).

Mandamus.—There is now in this State, but one form of action, and the writ of mandamus is but a process of the court in that action. Belmont v. Reilly, 71 N. C. 260 (1874).

Applied in Wolfe v. Galloway, 211 N. C. 361, 190 S. E. 213 (1937).

Cited in Mitchell v. Henderson, 63 N. C. 643 (1869); Harkey v. Houston, 65 N. C. 137 (1871); Abrams v. Cureton, 74 N. C. 523 (1876); Jones v. Mial, 79 N. C. 164 (1878); Turner v. McKee, 137 N. C. 251, 49 S. E. 330 (1904) (dis. op.); Henrietta Mills v. Rutherford County, 32 F. (2d) 570 (1929).

§ 2. 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, courts of justices of the peace, and such other courts inferior to the Supreme Court as may be established by law. (Const. 1868; Convention 1875.)

Editor's Note.—Section 4 of the Constitution of 1868 was as follows: "The judicial power of the State shall be vested in a court for the trial of impeachment, a Supreme Court, Superior Court, Court of Justices of the Peace, and special Courts." This was amended to become § 2 of the present Constitution by the Convention of 1875. Sections 2 and 3 of the Constitution of 1868, providing for a commission to report to the General Assembly rules of practice and procedure and a code of North Carolina law, were omitted by the Convention of 1875.

Judicial Power Vested in These Courts.—By this section the judicial power of the State is vested in a court for the trial of impeachments, a Supreme Court, superior court and special courts; the jurisdiction of special courts is defined by § 19 of this Article. State v. Pender, 66 N. C. 314 (1872).

General county courts must be ranked among the "other courts" alluded to in this section and Art. 4, § 30. Meador v. Thomas, 205 N. C. 142, 170 S. E. 110 (1933).

The office of justice of the peace is provided for and vouchsafed in this section of the Constitution. Ex parte Steele, 220 N. C. 685, 18 S. E. (2d) 132 (1942).

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 (1932).

Assembly May Abolish Courts Created by It. — The General Assembly has the power to create county, municipal, and recorders' courts, and a fortiori has the power to abolish or suspend a court created by it, even during the term of office of the judge of such court. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Assembly Cannot Abolish Superior

Courts or Courts of the Justices of Peace.—The superior courts and courts of justices of the peace were created by the Constitution, and the General Assembly cannot abolish them. Rhyne v. Lipscombe, 122 N. C. 650, 29 S. E. 57 (1898).

Legislature Can Establish Criminal Courts.—Under this section, the legislature can establish criminal courts. State v. Weddington, 103 N. C. 364, 9 S. E. 577 (1889).

An act of the General Assembly establishing a criminal court for a certain county, is constitutional. State v. Gales, 77 N. C. 283 (1877).

Power to Determine Validity of Statute.—The courts of this State have the power and in a proper case it is their duty, in the exercise of the judicial power vested in them by the Constitution of this State to decide whether or not a statute is valid. State v. Brockwell, 209 N. C. 209, 183 S. E. 378 (1936).

Cited in State v. Davis, 69 N. C. 495 (1873); State v. Spurtin, 80 N. C. 362 (1879); Ewart v. Jones, 116 N. C. 570, 21 S. E. 787 (1895); McDonald v. Morrow, 119 N. C. 666, 26 S. E. 132 (1896); Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); Mott v. Commissioners, 126 N. C. 866, 36 S. E. 330 (1900); State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906); Belk's Dept. Store v. Guilford County, 222 N. C. 441, 23 S. E. (2d) 897 (1943); In re Wingler, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

§ 3. **Trial court of impeachment.**—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. (Const. 1868.)

Cited in Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

§ 4. **Impeachment.**—The House of Representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the senators present. When the Governor is impeached, the Chief Justice shall preside. (Const. 1868.)

Cited in Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); Mott v. Commissioners, 126 N. C. 866, 36 S. E. 330 (1900) (dis. op.); Jones v. Standard Oil Co., 202 N. C. 328, 162 S. E. 741 (1932).

§ 5. **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. (Const. 1868.)

§ 6. **Supreme Court.**—The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six 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 divisions 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 a majority of all the 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 en banc. All sessions of the Court shall be held in the city of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof. (Const. 1868; Convention 1875; 1887, c. 212; 1935, c. 444.)

Proposed Amendment.—Session Laws 1953, c. 611, proposed that this section be amended by adding at the end thereof the following: "The General Assembly is

vested with authority to provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on said court in lieu of any active member thereof who is, for any cause, temporarily incapacitated."

Editor's Note. — This section as it appeared in the Constitution of 1868 (§ 8) read as follows: "The Supreme Court shall consist of a Chief Justice and four Associate Justices." The number of associate justices was changed to two by the Convention of 1875, and again to four pursuant to c. 212 of the Public Laws of 1887. This section was adopted in its present form pursuant to c. 444 of the Public Laws of 1935.

§ 7. Terms of the Supreme Court.—The terms of the Supreme Court shall be held in the city of Raleigh, as now, until otherwise provided by the General Assembly. (Const. 1868; Convention 1875.)

Editor's Note.—Section 9 in the Constitution of 1868 was as follows: "There shall be two terms of the Supreme Court held at the seat of government of the State in each year, commencing on the first Monday in January, and the first Monday in June, and continuing as long as the public interests may require." This section was changed to the present § 7 by the Convention of 1875. Subsequently the General Assembly changed the time of holding the two terms to the first Monday in February and the last Monday in August. Chapter 178, Public Laws of 1881; c. 49, Public Laws of 1887; c. 660, Public Laws of 1901; Revisal, 1905, s. 1535.

Cited in State v. Marsh, 134 N. C. 184, 47 S. E. 6 (1903) (dis. op.).

§ 8. 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. (Const. 1868; Convention 1875.)

Cross Reference.—For a thorough treatment of the appellate jurisdiction of the Supreme Court, see §§ 1-277 and 7-10 and annotations thereunder.

Editor's Note. — Section 10 of the Constitution of 1868, changed to § 8 of the present Constitution by the Convention of 1875, read as follows: "The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the Courts below, upon any matter of law or legal inference; but no issue of fact shall be tried before this Court; and the Court shall have power to issue any remedial writs necessary to give it a general supervision and control of the inferior court."

The Supreme Court is an appellate court. Its function, under the Constitution, is to review alleged errors and rulings of the trial court, and unless and until it is shown that a trial court ruled on a particular question, it is not given for the Supreme Court to make specific rulings thereon. Greene v. Spivey, 236 N. C. 435, 73 S. E. (2d) 488 (1952)

What Reviewable. — On appeal to the Supreme Court, only error as to the law or legal inferences are reviewable upon the record in the case. Merchants Nat. Bank v. Howard, 188 N. C. 543, 125 S. E. 126 (1924). See also, Barnes v. Teer, 218 N. C. 122, 10 S. E. (2d) 614 (1940); McKay v. Bullard, 219 N. C. 589, 14 S. E. (2d) 657 (1941).

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 (1932). See State v. Anderson, 208 N. C. 771, 182 S. E. 643 (1935).

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. Casey, 201 N. C. 185, 159 S. E. 337 (1931); Debnam v. Rouse, 201 N. C. 459, 160 S. E. 471 (1931); Carter v. Mullinax, 201 N. C. 783, 161 S. E. 486 (1931); Woody Brothers Bakery v. Greensboro Life Ins. Co., 201 N. C. 816, 161 S. E. 554 (1931); State v. Harrell, 203 N. C. 210, 165 S. E. 551 (1932); State v. Whiteside, 204 N. C. 710, 169 S. E. 711 (1933).

This section empowers the Supreme Court to review on appeal any decision of the courts below, upon any matter of law or legal inference; and this is to be presented in accordance with the mandatory

rules of the Supreme Court. State v. Bittings, 206 N. C. 798, 175 S. E. 299 (1934). See State v. Jackson, 211 N. C. 202, 189 S. E. 510 (1937).

Theory of Trial in Lower Court Is Adhered to.—The principle that an appeal will be determined in accordance with the theory of trial in the lower court, is enforced by this court because of its limited jurisdiction as an appellate court under this section. Apostle v. Acacia Mut. Life Ins. Co., 208 N. C. 95, 179 S. E. 444 (1935). See Ammons v. Fisher, 208 N. C. 712, 182 S. E. 479 (1935).

"Issues of Fact" Defined.—"Issues of fact" has been defined by the court to mean "such matters of fact as are put in issue by the pleadings, and a decision of which would be final and conclude the parties upon the matters in controversy in the issue." Battle v. Mayo, 102 N. C. 413, 9 S. E. 384 (1889).

Review of Issues of Fact.—The jurisdiction of the Supreme Court over issues of fact, under this section, will be assumed upon two conditions: 1. If the matter be of such an equitable nature as a court of equity under the former system took exclusive cognizance of. 2. If the proofs are written and documentary and in all respects the same as they were when the judge of the court below passed upon them. Worthy v. Shields, 90 N. C. 192 (1884). See Keener v. Finger, 70 N. C. 35 (1874).

This prohibition of trials of "issues of fact" by the Supreme Courts extends to issues of fact as heretofore understood, and does not hinder that tribunal from trying such questions of fact as may be involved in a consideration of the propriety of continuing or vacating an order for a provisional injunction. Heilig v. Stokes, 63 N. C. 612 (1869).

The Supreme Court cannot consider a paper which, unrelated to the trial, purports upon its face to have raised an issue of facts after the adjournment as to the recitals set forth in the commission given the presiding judge. State v. Graham, 194 N. C. 459, 140 S. E. 26 (1927).

Habeas Corpus.—No appeal to the Supreme Court lies upon the refusal of the judge, having jurisdiction, to release the petitioner in habeas corpus proceedings, except in cases concerning the care and custody of children, the remedy being by application for the writ of certiorari which lies in the discretion of the appellate court. State v. Yates, 183 N. C. 753, 111 S. E. 337 (1922); State v. Hooker, 183 N. C. 763, 111 S. E. 351 (1922); In re Blake, 184 N. C. 278, 114 S. E. 294 (1922).

A decree in habeas corpus proceedings to determine the custody of a child as between its divorced parents is not appealable, the sole remedy being by certiorari to invoke the constitutional power of the Supreme Court to supervise and control proceedings of inferior courts. In re Ogden, 211 N. C. 100, 189 S. E. 119 (1937).

Remedial Writs Controlling Proceedings of Inferior Courts.—The Supreme Court is vested with authority to issue any remedial writ necessary to give it general supervision and control over the proceedings of inferior courts. State v. Cochran, 230 N. C. 523, 53 S. E. (2d) 663 (1949).

Writ of Error Coram Nobis.—The Supreme Court, in its supervisory power, has authority to entertain a petition for permission to apply to the superior court for a writ of error coram nobis. In re Taylor, 230 N. C. 566, 53 S. E. (2d) 857 (1949); State v. Daniels, 231 N. C. 17, 56 S. E. (2d) 2 (1949). As to allowance of petition where trial court failed to appoint counsel, see note to § 15-4.

Writ of Certiorari. —Where an application for writ of certiorari in the nature of a writ of error is made for the purpose of bringing up an appeal when the right of appeal is lost in the trial court by failure to file statement of case on appeal within the time allowed, applicant must negative laches and show merit. State v. Moore, 210 N. C. 686, 188 S. E. 421 (1936).

Where the case is not one in which the alleged error appears on the face of the record proper, which might be corrected in Supreme Court's supervisory power under this section, but it is to review a ruling of the court entered on motion after trial, as well as an application for certiorari, it was held that since the case was one in which the State had no right of appeal, a dismissal must necessarily follow. State v. Todd, 224 N. C. 776, 32 S. E. (2d) 313 (1944).

Caveat to Will.—Under the provisions of this section the Supreme Court on appeal from an issue of devisavit vel non, involved in the trial of a caveat to a will, is confined to a consideration of assignments of error in matters of law and legal inference. In re Will of Brown, 194 N. C. 583, 140 S. E. 192 (1927).

Reduction of verdict by the trial court involves a matter of law reviewable by the superior court. Hyatt v. McCoy, 194 N. C. 760, 140 S. E. 807 (1927).

Correcting Error in Judgment Where Appeal Subject to Dismissal. — Even though an appeal may be subject of dismissal, if the proceeding is in rem and

the judgment entered in the court below vitally affects the title to real property, the Supreme Court will take jurisdiction for the purpose of correcting an error in the judgment. This can be done in the exercise of its supervisory power. Ange v. Ange, 235 N. C. 506, 71 S. E. (2d) 19 (1952).

Applied in Hardy v. Heath, 188 N. C. 271, 124 S. E. 564 (1924); King v. Taylor, 188 N. C. 450, 124 S. E. 751 (1924); Caldwell v. Caldwell, 189 N. C. 805, 128 S. E. 229 (1925); Newton v. State Highway Commission, 194 N. C. 303, 139 S. E. 613 (1927); State v. Leonard, 195 N. C. 242, 141 S. E. 736 (1928); Lacy v. State, 195 N. C. 284, 141 S. E. 886 (1928); Gross v. Williams, 196 N. C. 213, 145 S. E. 169 (1928); State v. Lawrence, 199 N. C. 481, 154 S. E. 741 (1930); Misskelley v. Home Life Ins. Co., 205 N. C. 496, 171 S. E. 862 (1933); Mehaffey v. Provident Life, etc., Ins. Co., 205 N. C. 701, 172 S. E. 331 (1934); Lightner v. Raleigh, 206 N. C. 496, 174 S. E. 272 (1934); Alston v. Southern Ry. Co., 207 N. C. 114, 176 S. E. 922 (1934).

Stated in State v. Thompson, 226 N. C. 651, 39 S. E. (2d) 823 (1946).

Cited in Bledsoe v. Nixon, 69 N. C. 82 (1873); State v. Swepson, 82 N. C. 541 (1880); State v. Garrell, 82 N. C. 581 (1880); McDonald v. Morrow, 119 N. C. 666, 26 S. E. 132 (1896); Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899) (dis. op.); State v. Freeman, 197 N. C. 376, 148 S. E. 450 (1929); Tallassee Power Co. v. Peacock, 197 N. C. 735, 150 S. E. 510 (1929); Seaboard Air Line Railway Co. v. Brunswick County, 198 N. C. 549, 152 S. E. 627 (1930); Warren v. Pilot Life Ins. Co., 217 N. C. 705, 9 S. E. (2d) 479 (1940); McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941); State v. Biggs, 224 N. C. 23, 29 S. E. (2d) 121 (1944) (dis. op.); Fuquay v. Fuquay, 232 N. C. 692, 62 S. E. (2d) 83 (1950).

§ 9. **Claims against the State.**—The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action. (Const. 1868.)

Cross Reference.—See notes under § 7-8.

Purpose of Section.—The original jurisdiction conferred upon the Supreme Court by this section, is for the benefit only of such plaintiffs, and to be used only in such cases, as cannot otherwise obtain a footing in court by reason of the State being a party. Bain v. State, 86 N. C. 49 (1882).

It was intended by the provision of this section that persons who asserted that they held legal claims against the sovereign State, should here find a tribunal before which they might have, in proper cases, the legality of their claims adjudicated—a tribunal before which the sovereign State would, for a certain purpose, abdicate the privilege of exemption from liability to be sued and appear as any other litigant, to the end that its liability to the petitioner might be determined by the law. Cowles v. State, 115 N. C. 173, 20 S. E. 384 (1894).

Only Way State Can Be Sued.—The State cannot be sued, except as provided in this section. Burton v. Furman, 115 N. C. 166, 20 S. E. 443 (1894); Carpenter v. Atlantic, etc., R. Co., 184 N. C. 400, 114 S. E. 693 (1922).

Neither the State nor its subordinate agencies of government may be subject to suits or actions against it or them in its own courts or the courts of other states unless it has expressly consented to such suit. Dredging Company v. State, 191 N. C. 243, 131 S. E. 665 (1926).

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 (1931).

A state cannot be sued in its own courts or elsewhere unless it has consented to such suit, by statutes or in cases authorized by provisions of the organic law, instanced by Art. III, Const. of U. S.; this section, Const. of North Carolina. Dalton v. State Highway, etc., Comm., 223 N. C. 406, 27 S. E. (2d) 1 (1943).

Jurisdiction Recommendatory Only. — The original jurisdiction given the Supreme Court to pass upon claims against the State or its subordinate agencies of government, which are not subject to suit or execution under judgment, are recommendatory to the legislature only, as to the matters of law involved upon facts agreed to, or made to appear, and this court does not pass upon conflicting evidence to determine the facts at issue. Dredging Co. v. State, 191 N. C. 243, 131 S. E. 665 (1926). See also, Rotan v. State, 195 N. C. 291, 141 S. E. 733 (1928).

What Examination Confined To.—The jurisdiction conferred upon the Supreme Court by this section to hear claims against the State is confined to an examination of and adjudication of the legal validity of such claims; no power to enforce its judgment is given the court; its decisions are merely recommendatory to the legislature, who may provide for the judgment of the claims, if it sees proper to do so. Baltzer v. State, 104 N. C. 265, 10 S. E. 153 (1889).

Kind of Claims Reviewed.—The claim against the State must be such as, against any other defendant, could be reduced to judgment and enforced by execution. Bain v. State, 86 N. C. 49 (1882).

Necessity of Question of Law.—The Supreme Court has not original jurisdiction to hear claims against the State in cases in which no question of law is involved. Bledsoe v. State, 64 N. C. 392 (1870); Miller v. State, 134 N. C. 270, 46 S. E. 514 (1904).

The Supreme Court will not recommend to the legislature the payment of a claim against the State, when no questions of law are involved, or when such questions are resolved against the claimant. Dredging Company v. State, 191 N. C. 243, 131 S. E. 665 (1926).

A claimant against the State is not entitled to the recommendatory jurisdiction of the Supreme Court upon petition presented to it under the provisions of this section when no question of law is presented by the facts in the petition. Warren v. State, 199 N. C. 211, 153 S. E. 864 (1930).

Repeal of Statute.—The repeal of statute under which a contract has been made between the plaintiff and the State in no way affects the plaintiff's rights under the contract. Clements v. State, 76 N. C. 199 (1877).

Matters of Small Value. — This section ought not to be invoked in matters of small value, particularly when there is no doubt about the law. The claimant should apply at once to the legislature for relief. Sinclair v. State, 69 N. C. 47 (1873).

Suit against Agent of State. — A suit prosecuted against an officer or agent who represented the State in conduct and liability, and wherein the State is the real party whose action will be controlled by the judgment and against which relief is sought, is a suit against the State, and not against its officer or agent, whose acts are alleged to have caused the injury complained of. Carpenter v. Atlanta, etc., R. Co., 184 N. C. 400, 114 S. E. 693 (1922).

Action by Clerk for Fees. — The Supreme Court has not original jurisdiction of an action against the State by a clerk of the superior court for fees in an action instituted by the State and for which it has been adjudged liable. Miller v. State, 134 N. C. 270, 46 S. E. 514 (1904).

Holder of State Bonds.—An owner and holder of a bond of the State and coupons past due thereon has a right to invoke the recommendatory jurisdiction of the Supreme Court to pass upon the validity of the coupons as a claim against the State, under this section. Horne v. State, 82 N. C. 382 (1880).

Issues of Fact.—The Supreme Court in the exercise of its recommendatory original jurisdiction to hear claims against the State will dismiss any action brought against the State where the sole issue is one of fact. Lacy v. State, 195 N. C. 284, 141 S. E. 886 (1928).

A claim against the State Highway Commission for damages arising from an alleged breach of contract in the building of a State highway is a claim against the State, but when the only issues presented therein are ones of fact, the Supreme Court will not exercise its recommendatory original jurisdiction, and the action will be dismissed. Lacy v. State, 195 N. C. 284, 141 S. E. 886 (1928).

Applied in Rand v. State, 65 N. C. 194 (1871); Newton v. State Highway Commission, 194 N. C. 303, 139 S. E. 613 (1927).

Stated in O'Neal v. Wake County, 196 N. C. 184, 145 S. E. 28 (1928); Yancey v. North Carolina State Highway, etc., Comm., 222 N. C. 106, 22 S. E. (2d) 256 (1942).

Cited in Battle v. Thompson, 65 N. C. 406 (1871); Boner v. Adams, 65 N. C. 639 (1871); Baltzer v. State, 109 N. C. 187, 13 S. E. 724 (1891); Blount v. Simmons, 119 N. C. 50, 25 S. E. 789 (1896); Pate v. Wilmington, etc., R. Co., 122 N. C. 877, 29 S. E. 334 (1898); Atlantic & N. C. R. Co. v. Dortch, 124 N. C. 663, 33 S. E. 1014 (1899) (dis. op.); Capital Printing Co. v. Hoey, 124 N. C. 767, 33 S. E. 160 (1899) (con. op.); White v. Auditor, 126 N. C. 570, 36 S. E. 132 (1900) (dis. op.).

§ **10. Judicial districts for Superior Courts.**—The General Assembly shall divide the State into a number of judicial districts which number may be increased or reduced and shall provide for the election of one or more Superior Court judges for each district. There shall be a Superior Court in each county

at least twice in each year to continue for such time in each county as may be prescribed by law. (Const. 1868; Convention 1875; 1949, c. 393.)

Editor's Note.—The Constitution of 1868 provided for twelve judicial districts, and the Convention of 1875 reduced the number to nine. The amendment adopted by vote at the general election of November 7, 1950, made this section read as set out above. There are now twenty-one judicial districts in the State. G. S. §§ 7-68, et seq.

Stated in Reid v. Reid, 199 N. C. 740, 155 S. E. 719 (1930).

Cited in Adoo v. Banbow, 63 N. C. 461 (1869); State v. Adair, 66 N. C. 298 (1872); State v. Taylor, 76 N. C. 64 (1877); Shepard v. Commissioners, 90 N. C. 115 (1884); Rhyne v. Lipscomb, 122 N. C. 650, 29 S. E. 57 (1898); Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899) (dis. op.); State v. Stewart, 189 N. C. 340, 127 S. E. 260 (1925).

§ 11. Judicial districts; rotation; special Superior Court judges; assignment of Superior Court judges by Chief Justice.—Each judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts within a division successively; but no judge shall hold all the courts in the same district oftener than once in four years. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice, to hold court in any district or districts within the State; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. 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. (Const. 1868; Convention 1875; 1915, c. 99; 1949, c. 775.)

Cross References.—As to judgment authorized to be entered by the clerk, see section 1-209 and notes thereto.

As to rotation of superior court judges, see leading article in 27 N. C. Law Rev. 181. See also, 26 N. C. Law Rev 334.

Editor's Note.—Sec. 14 of the Constitution of 1868 was re-written as a part of this section, which was amended by c. 99, Public Laws of 1915, ratified by the people in November, 1916, and effective Jan. 10, 1917. This section was subsequently amended by vote at the general election of November 7, 1950. The last amendment vested the Chief Justice with authority to make assignment of superior court judges.

Proper Interpretation of Section.—The proper interpretation of this section is, that while the Governor is taking a reasonable time for deliberation and acquiring information that will aid him in choosing a competent and worthy officer, he may require an unoccupied judge to hold a specified term or terms of the courts of the district to which the successor of the deceased judge will be assigned by the general law immediately upon such successor's qualification. State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

Creation of Extra Term of Court.—The provisions of this section requiring the judges to preside in the different districts successively, and prohibiting them from holding the courts in the same district oftener than once in four years, applies to the series of successive courts constituting a circuit or riding, and does not restrict the legislature from creating an extra term of the superior court of a county and designating the resident judge to hold the same. State v. Monroe, 80 N. C. 373 (1879).

An act authorizing the Governor of the State to appoint special terms of the superior courts, is not unconstitutional. State v. Ketchey, 70 N. C. 621 (1874).

Inhibition Does Not Apply to Exchange Judges on Special Terms.—The inhibition contained in this section applies neither to the holding by any judge of the superior court of one or more regular terms of said court by exchange with some other judge, and with the sanction of the Governor **nor** to the holding of special terms under the order contemplated in said provision. State v. Turner, 119 N. C. 841, 25 S. E. 810 (1896).

The Governor under this section, can require a judge of the superior court to hold a term of the court in a county not within his own district. And when the Governor so authorizes and empowers a judge to hold such court, expressing in the commission that it is done with his consent, and under that authority the judge holds the court, as between the judge and the suit-

ors in the court, the consent and authority granted by the Governor is equivalent to a command. State v. Watson, 75 N. C. 136 (1876.)

Appointment upon Death of Judge.—Upon the death of one of the judges of the superior courts, the Governor has the authority under this section to require one of the other judges to hold one or more specified terms of the courts in the district assigned to the deceased judge. State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

When Regular Judge Able to Hold Court. — Objection by the defendant charged with a capital felony to the authority of the judge assigned by the Governor of the State to hold a special term of the superior court, upon the ground that the judge assigned to hold the courts of the district was in good health, and holding a term of the court in another county within the district, cannot be sustained as repugnant to or unauthorized by this section. State v. Montague, 190 N. C. 841, 130 S. E. 838 (1925).

Emergency judges, appointed under the provisions of our statute as to Supreme and superior court judges who have retired from active service in pursuance of the provisions of our Constitution, have no jurisdiction to hear and determine, at chambers, a matter of mandamus, or when not holding a term of court assigned to them. Dunn v. Taylor, 186 N. C. 254, 119 S. E. 495 (1923). Const. Art. IV, sec. 11.

Under the system of rotation prescribed by this section, the judge holding the courts of a judicial district has jurisdiction to act in all matters within the jurisdiction of the superior court, and by consent of parties, such judge may, out of term and in or out of the county and out of the district, sign a judgment affecting any matter within such jurisdiction. Edmundson v. Edmundson, 222 N. C. 181, 22 S E. (2d) 576 (1942), and cases cited therein.

While this section provides for the appointment of emergency judges by statute, and our statute confers the power of their appointment upon the Governor under the restrictions of the Constitution that it may be done when the judge assigned thereto, by reason of sickness, disability or other cause, is unable to attend and hold the court, and when no other judge is available, the validity of the trial for a homicide during the designated term may not be maintained by the defendant upon his affidavit filed subsequent to the trial, raising an issue as to whether the resident judge of the district was available at the time of the trial. State v. Graham, 194 N. C. 459, 140 S. E. 26 (1927).

The power of special and emergency judges is defined and bounded by the words "in the court which they are so appointed to hold," and if not holding, they are without authority to approve special proceedings. Ipock v. North Carolina Joint Stock Land Bank, 206 N. C. 791, 175 S. E. 127 (1934).

Under this section, the power and authority of special and emergency judges is defined and limited by the words "in the courts which they are appointed to hold"; and the General Assembly is without power to grant such judges jurisdiction in excess of this definite limitation Shepard v. Leonard, 223 N. C. 110, 25 S. E. (2d) 445 (1943).

This section does not confer or authorize the legislature to confer any "in chambers" or "vacation" jurisdiction upon special judges assigned to hold a designated term of court. Shepard v. Leonard, 223 N. C. 110, 25 S. E. (2d) 445 (1943).

Residence Requirement Does not Confer Jurisdiction.—No jurisdiction is conferred upon a resident judge by the requirement of this section that every judge of the superior court shall reside in the district for which he is elected Howard v. Queen City Coach Co., 211 N. C. 329, 190 S. E. 478 (1937). See also, Collins v. Wooten, 212 N. C. 359, 193 S. E. 385 (1937).

Stated in Greene v. Stadiem, 197 N. C. 472, 149 S. E. 685 (1929); Reid v. Reid, 199 N. C. 740, 155 S. E. 719 (1930).

Cited in State v. McGimsey, 80 N. C. 377 (1879); Delafield v. Mercer Construction Co., 115 N. C. 21, 20 S. E. 167 (1894); McDonald v. Morrow, 119 N. C. 666, 26 S. E. 132 (1896); Rhyne v. Lipscomb, 122 N. C. 650, 29 S. E. 57 (1898); Mott v. Commissioners, 126 N. C. 866, 36 S. E. 330 (1900); Watson v. North Carolina R. Co., 152 N. C. 215, 67 S. E. 502 (1910); Ward v. Agrillo, 194 N. C. 321, 139 S. E. 451 (1927); In re Advisory Opinion, 225 N. C. 772, 39 S. E. (2d) 217 (1945); State v. Anderson, 228 N. C. 720, 47 S. E. (2d) 1 (1948).

§ **12. Jurisdiction of courts inferior to Supreme Court.**—The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coördinate department of the government; but the General Assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the Supreme

Court among the other courts prescribed in this Constitution or which may be established by law, in such manner as it may deem best; provide also a proper system of appeals; and regulate by law, when necessary, the methods of proceeding in the exercise of their powers, of all the courts below the Supreme Court, so far as the same may be done without conflict with other provisions of this Constitution. (Const. 1868; Convention 1875.)

Cross References.—As to jurisdiction of superior courts, see § 7-63 and notes thereto; as to jurisdiction of justices, see §§ 7-121 et seq.; as to criminal jurisdiction of recorder's court, see § 7-190; jurisdiction in municipal court, see § 7-223; civil jurisdiction, see §§ 7-246 et seq.

As to constitutionality of Compensation Act under this section, see Art. IV, § 2 and notes thereto.

Editor's Note.—This section was added by the Convention of 1875, replacing §§ 15, 16 and 17 of the Constitution of 1868 which were as follows:

"Sec. 15. The Superior Courts shall have exclusive original jurisdiction of all civil actions, whereof exclusive original jurisdiction is not given to some other courts; and of all criminal actions in which the punishment may exceed a fine of fifty dollars or imprisonment for one month."

"Sec. 16. The Superior Courts shall have appellate jurisdiction of all issues of law or fact, determined by a Probate Judge or a Justice of the Peace, where the matter in controversy exceeds twenty-five dollars, and of matters of law in all cases."

"Sec. 17. The clerks of the Superior Courts shall have jurisdiction of the probate of deeds, the granting of letters testamentary and of administration, the appointment of guardians, the apprenticing of orphans, to audit the accounts of executors, administrators and guardians, and of such other matters as shall be prescribed by law. All issues of fact joined before them shall be transferred to the Superior Courts for trial, and appeals shall lie to the Superior Courts from their judgment in all matters of law."

For the law distributing this power and jurisdiction to the inferior courts, see G. S., c. 7.

In General.—The Constitution of North Carolina vests the General Assembly with power to allot and distribute in such manner as it may deem best, that portion of the power and jurisdiction of the judicial department, "which does not pertain to the Supreme Court among the other courts prescribed in this Constitution, or which may be established by law." Edmundson v. Edmundson, 222 N. C. 181, 22 S. E. (2d) 576 (1942).

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 (1932).

Cannot Delegate Power.—The provisions of this section giving the legislature the authority to distribute that portion of the judicial power and jurisdiction of courts not pertaining to the Supreme Court, among other courts is restricted in its exercise to the legislature itself, and may not be delegated by it; and where a recorder's court has been already established, an act which authorizes the county commissioners to increase its jurisdiction in civil matters is unconstitutional. Durham Provision Co. v. Daves, 190 N. C. 7, 128 S. E. 593 (1925).

Under the authority of this section, the General Assembly may create courts inferior to the Supreme Court by private act or by general statute which does not delegate its discretion, and provided such inferior courts do not have substantially the same powers as those of the superior courts, and are given a less extensive jurisdiction, with provisions for appeal from such inferior court to the superior courts, so that the constitutional powers and provisions relative to the superior courts are not invaded. Albertson v. Albertson, 207 N. C. 547, 178 S. E. 352 (1935).

Acts Must Not Interfere with Vested Rights.—This section provides for the establishment of inferior courts by the legislature; the acts passed for such purpose must not interfere with vested rights, or the constitutional rights of other parties. State v. Webb, 125 N. C. 243, 34 S. E. 430 (1899).

Assembly May Abolish Courts Created by It.—The General Assembly has the power to create county, municipal, and recorders' courts, a fortiori has the power to abolish or suspend a court created by it, even during the term of office of the judge of such court. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

The superior court is the court of final jurisdiction and has power to completely determine a controversy properly before it, and its judgment is final as to all matters of fact established in ac-

cordance with procedure and is subject to appeal and review only on matters of law. State v. Carolina Scenic Coach Co., 218 N. C. 233, 10 S. E. (2d) 824 (1940).

The legislature has full authority to provide for appeals to the superior court by licensees whose driving licenses have been suspended or revoked by the discretionary action of the Department of Motor Vehicles. In re Wright, 228 N. C. 584, 46 S. E. (2d) 696 (1948). See § 20-25.

Recorder's Court.—The jurisdiction of the recorder's court is bestowed by the legislature under the authority of this section. Jones v. Brinkley, 174 N. C. 23, 93 S. E. 372 (1917).

Supreme Court Rules.—The Supreme Court is given, by this section of the Constitution, exclusive power to make its own rules of practice, without legislative authority to interfere, and in case of conflict the rules made by the Court will be observed. Cooper v. Commissioners, 184 N. C. 615, 113 S. E. 569 (1922); State v. Ward, 184 N. C. 618, 113 S. E. 775 (1922); Hardy v. Heath, 188 N. C. 271, 124 S. E. 564 (1924).

The Supreme Court is an organic branch of the State government, and not bound by acts of the legislature undertaking to regulate its rules of practice. Herndon v. Imperial Fire Ins. Co., 111 N. C. 384, 16 S. E. 465 (1892).

This section gives to the General Assembly power to regulate proceedings in all the courts "below the Supreme Court," but confers on the Supreme Court the exclusive power to regulate its own procedure. Horton v. Green, 104 N. C. 400, 10 S. E. 470 (1889).

An allotment or division of jurisdiction is within the contemplation of this section. The legislature may therefore allot inferior courts a portion of the jurisdiction of the superior court, providing also for the right of appeal. Essex Inv. Co. v. Pickelsimer, 210 N. C. 541, 187 S. E. 813 (1936), quoting Jones v. Standard Oil Co., 202 N. C. 328, 162 S. E. 741 (1932).

Cited in State v. Waldrop, 63 N. C. 507 (1869); State v. Jarvis, 63 N. C. 556 (1869); Wilmington v. Davis, 63 N. C. 582 (1869); Simpson v. Jones, 82 N. C. 323 (1880); State v. Moore, 82 N. C. 660 (1880); State v. Moore, 104 N. C. 743, 10 S. E. 183 (1889); Caldwell v. Wilson, 121 N. C. 425, 28 S. E. 554 (1897) (dis. op.); Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899) (dis. op.); In re Gorham, 129 N. C. 481, 40 S. E. 311 (1901) (con. op.); Brinkley v. Smith, 130 N. C. 224, 41 S. E. 106 (1902); Rockwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905); Settle v. Settle, 141 N. C. 553, 54 S. E. 445 (1906); State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906); Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937); Allen v. Allemania Fire Ins. Co., 213 N. C. 586, 197 S. E. 200 (1938); In re Wingler, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

§ **13. In case of waiver of trial by jury.**—In all issues of fact, joined in any court, the parties may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury. (Const. 1868.)

Cross Reference.—For a thorough treatment of waiver of jury trial, see §§ 1-184 and 1-188 and annotations thereunder.

In Civil Actions.—The right to trial by jury in civil cases may be waived. Chesson v. Kieckhefer Container Co., 223 N. C. 378, 26 S. E. (2d) 904 (1943); Simmons v. Lee, 230 N. C. 216, 53 S. E. (2d) 79 (1949). As to waiver in reference cases, see note to § 1-189.

It was error for a trial court to determine issues of fact raised by the pleadings in the absence of waiver of the constitutional and statutory right to a trial by jury, there being no question of reference. Sparks v. Sparks, 232 N. C. 492, 61 S. E. (2d) 356 (1950).

Waiver of Indictment.—Section 15-140 authorizing the waiver of an indictment in the superior court by the defendant bound over from an inferior court, is constitutional and valid. State v. Jones, 181 N. C. 543, 106 S. E. 827 (1921).

Waiver by Agreement.—Where the case on appeal recites that the parties agreed that the court might render judgment out of term and out of the district, and the judgment recites the same, appellant's contention that trial by the court had not been agreed upon cannot be sustained, since trial by jury would be impossible under the agreement that judgment might be rendered out of term and out of the district. Odom v. Palmer, 209 N. C. 93, 182 S. E. 741 (1935).

Manner of Waiver Controlled by Statute.—Holmes Elec. Co. v. Carolina Power, etc., Co., 197 N. C. 766, 150 S. E. 621 (1929). See also, Green Sea Lbr. Co. v. Pemberton, 188 N. C. 532, 125 S. E. 119 (1924).

Attachment Proceedings.—In attachment and other ancillary proceedings it is competent for the court to find the facts from

the affidavits and other evidence; and a party consenting to this mode of trial cannot afterwards demand a jury trial. Pasour v. Linberger, 90 N. C. 159 (1884).

Special Proceeding to Establish Boundary Line.—As to defendant's waiver of jury trial by failure to tender pertinent issues, see Simmons v. Lee, 230 N. C. 216, 53 S. E. (2d) 79 (1949).

Acts Constituting Waiver after Compulsory Reference.—See note to § 1-189.

Findings of Court Are Conclusive. — Where a jury trial is waived, the findings by the court upon conflicting evidence are conclusive under this section, and are not subject to review upon appeal. Barringer v. Wilmington Sav., etc., Co., 207 N. C. 505, 177 S. E. 795 (1935).

Quoted in Burnsville v. Boone, 231 N. C. 577, 58 S. E. (2d) 351 (1950); Icenhour v. Bowman, 233 N. C. 434, 64 S. E. (2d) 428 (1951).

Cited in Lee v. Pearce, 68 N. C. 76 (1873); Wilson v. Featherstone, 120 N. C. 446, 27 S. E. 124 (1897); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

§ **14. Special courts in cities.**—The General Assembly shall provide for the establishment of special courts, for the trial of misdemeanors, in cities and towns, where the same may be necessary. (Const. 1868.)

Cross Reference.—See §§ 7-185 et seq.

In General.—This section was construed with Art. IV, § 2 and Art. IV, § 30 in determining the meaning of "other courts" in the case of Meador v. Thomas, 205 N. C. 142, 170 S. E. 110 (1933).

This section held to modify Art. IV, § 27 in the cases of State v. Doster, 157 N. C. 634, 73 S. E. 111 (1911); Farmers' Cotton Oil Co. v. Blue Ridge Gro. Co., 169 N. C. 521, 86 S. E. 338 (1915).

Constitutionality of Act Establishing Court.—A legislative enactment creating a municipal court for an incorporated city or town, and conferring thereon jurisdiction in a territory extending one mile beyond its corporate limits over criminal cases concurrently cognizable in a justice's court, is valid and does not contravene this section. State v. Brown, 159 N. C. 467, 74 S. E. 580 (1912). See also, Washington v. Hammond, 76 N. C. 33 (1877); State v. Collins, 151 N. C. 648, 65 S. E. 617 (1909); State v. Boyd, 175 N. C. 791, 95 S. E. 161 (1918).

Jurisdiction Confined to Misdemeanors. —This jurisdiction of courts established under this section is confined to misdemeanors. State v. Walker, 65 N. C. 461 (1871); State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906).

Appeal.—The legislature cannot give to courts established under this section a right of appeal direct to the Supreme Court. State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905).

Quoted in Durham Provision Co. v. Davis, 190 N. C. 7, 128 S. E. 393 (1925).

Cited in Wilmington v. Davis 63 N. C. 582 (1869); Delafield v. Mercer Construction Co., 115 N. C. 21, 20 S. E. 167 (1894); State v. Higgs, 126 N. C. 1014, 35 S. E. 473 (1900); Singer Sewing Mach. Co. v. Burger, 181 N. C. 241, 107 S. E. 14 (1921); State v. Abernathy, 190 N. C. 768, 130 S. E. 619 (1925); Jones v. Standard Oil Co., 202 N. C. 328, 162 S. E. 741 (1932).

§ **15. Clerk of the Supreme Court.**—The clerk of the Supreme Court shall be appointed by the Court, and shall hold his office for eight years. (Const. 1868.)

§ **16. Election of Superior Court clerk.**—A clerk of the Superior Court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. (Const. 1868.)

Cross Reference.—See § 2-2.

When Term Begins.—The term of office of a superior court clerk, elected in August, 1878, began on the first Monday of September following. Clarke v. Carpenter, 81 N. C. 309 (1879).

Cited in Trustees v. McIver, 75 N. C. 76 (1876); Rhyne v. Lipscombe, 122 N. C. 650, 29 S. E. 57 (1898); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); In re Styers' Estate, 202 N. C. 715, 164 S. E. 123 (1932).

§ **17. Term of office.**—Clerks of the Superior Courts shall hold their offices for four years. (Const. 1868.)

Cross Reference.—See § 2-2.

Cited in Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); In re Wright's Estate, 200 N. C. 620, 158 S. E. 192 (1931); In re Styers' Estate, 202 N. C. 715, 164 S. E. 123 (1932).

§ **18. 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 the judges shall not be diminished during their continuance in office. (Const. 1868.)

Cross Reference.—See §§ 138-1 et seq., and the notes thereto.

The legislature may designate the compensation of these officials prior to the beginning of their terms and it should follow that the compensation may be declared a certain amount less the income tax on that amount. See § 105-141. See 11 N. C. Law Rev. 256.

Legislature May Delegate Power to Fix Salary of County Court Judge.—The fixing of the salary of the judge of a county court is essentially a local matter which the General Assembly may delegate to the commissioners of the county, and therefore subsec. 14 of § 1, c. 519, Public-Local Laws of 1939, providing that the board of county commissioners of Forsyth County should have the power to fix the salary of the judge of the county court, is a constitutional delegation of the power of the legislature. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Prohibition of Salary Diminution Applies to Constitutional Courts.—The provision of this section that the salaries of judges shall not be diminished during their continuance in office applies only to judges of courts existing by virtue of the Constitution and not to those established by legislative enactment. Efird v. Board of Com'rs, 219 N. C. 96, 12 S. E. (2d) 889 (1941).

Salaries Exempt from Taxation. — Where the Constitution provides that the salaries of judges shall not be diminished during their continuance in office, the salaries are exempt from taxation. In the Matter of Taxation of Salaries of Judges, 131 N. C. 692, 42 S. E. 970 (1902).

The constitutional restriction on the legislature not to diminish salaries of the judges during their continuance in office is still in force, unaffected or disturbed by the amendment of 1920 (as to income tax), and though their income from other sources may be taxed, a tax on their salaries during their term of office is to diminish their income from such source in contravention of the express terms of this section. Long v. Watts, 183 N. C. 99, 110 S. E. 765 (1922).

See Note in 1 N. C. Law Rev. 39.

Same—When Salaries Increased. — An increase of the salaries of the judges during a term of office is the fixing of their salary by the legislature in such amount as in its judgment is a proper compensation for their services, and an attempt by an agency of the legislature, either under actual or mistaken authority, to impose a tax thereon is an attempt to diminish these salaries during the term of office. Long v. Watts, 183 N. C. 99, 110 S. E. 765 (1922).

Same—Duty of Supreme Court to Pass upon Rights.—It is the duty of the Supreme Court to pass upon the rights of one of the judges of the State as a citizen thereof, when he, in a case properly presented, denies the constitutional right of the State or one of its designated agencies, to tax his salary paid to him as one of its judges, being in contravention of this section, prohibiting the legislature from diminishing the salaries of the judges during their continuance in office. Long v. Watts, 183 N. C. 99, 110 S. E. 765 (1922).

Same—Compensation for Holding Extra Term. — The additional compensation of one hundred dollars given to a superior court judge for services in holding a special term is a part of his salary. Buxton v. Commissioners, 82 N. C. 91 (1880).

§ **19. What laws are, and shall be, in force.**—The laws of North Carolina, not repugnant to this Constitution or to the Constitution and laws of the United States, shall be in force until lawfully altered. (Const. 1868.)

Cited in State v. Hairston, 63 N. C. 451 (1869); State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906).

§ **20. Disposition of actions at law and suits in equity, pending when this Constitution shall go into effect, etc.**—Actions at law and suits in equity pending when this Constitution shall go into effect shall be transferred to the courts having jurisdiction thereof, without prejudice by reason of the change; and all such actions and suits commenced before, and pending at the adoption by the General Assembly of the rules of practice and procedure herein

provided for, shall be heard and determined according to the practice now in use, unless otherwise provided for by said rules. (Const. 1868.)

Cross Reference.—As to superior courts becoming the successors of courts of equity see § 1 of this Article and notes thereto.

Applied in Johnson v. Sedberry, 65 N. C. 1 (1871).

Cited in Foard v. Alexander, 64 N. C. 69 (1870); Patton v. Shipman, 81 N. C. 347 (1879); Reynolds v. Reynolds, 208 N. C. 578, 182 S. E. 341 (1935).

§ 21. Elections, terms of office, etc., of justices of the Supreme and judges of the Superior Courts.—The justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years. The judges of the Superior Courts, elected at the first election under this amendment, shall be elected in like manner as is provided for justices of the Supreme Court, and shall hold their offices for eight years. The General Assembly may, from time to time, provide by law that the judges of the Superior Courts, chosen at succeeding elections, instead of being elected by the voters of the whole State, as is herein provided for, shall be elected by the voters of their respective districts. (Const. 1868; Convention 1875.)

Cross Reference.—See § 7-2.

Editor's Note.—To form this section, the Convention of 1875 combined with some changes §§ 26 and 27 of the Constitution of 1868, which were as follows:

"Sec. 26. The Justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly." They shall hold their offices for eight years. The Judges of the Superior Courts shall be elected in like manner, and shall hold their offices for eight years; but the Judges of the Superior Courts elected at the first election under this Constitution shall, after their election, under the superintendence of the Justices of the Supreme Court, be divided by lot into two equal classes, one of which shall hold office for four years, the other for eight years.

"Sec. 27. The General Assembly may provide by law that the Judges of the Superior Courts, instead of being elected by the voters of the whole State as is herein provided for, shall be elected by the voters of their respective district."

Applied in Ingle v. State Board of Elections, 226 N. C. 454, 38 S. E. (2d) 566 (1946).

Cited in Trustees v. McIver, 72 N. C. 76 (1875); Opinion of Judges, 114 N. C. Appx. 992 (1894); Rhyne v. Lipscombe, 122 N. C. 650, 29 S. E. 57 (1898); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905).

§ 22. Transaction of business in the Superior Courts.—The Superior Courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury. (Const. 1868.)

Does Not Apply to Terms of Courts.—This section must be construed in connection with § 11 of this article, and does not apply to the terms of courts and matters connected therewith. Delafield v. Mercer Construction Co., 115 N. C. 21, 20 S. E. 167 (1894).

Court of Clerk Not Included. — The phrase "superior court" in this section does not mean the court of the clerk. McAdoo v. Benbow, 63 N. C. 461 (1869).

Rendition of Judgment after Term.—Where the issues of fact had been disposed of by a consent verdict, and the court having jurisdiction of the case, clearly, and being always open, there is nothing in this clause of the Constitution which forbids the rendition of a judgment upon verdict after the expiration of the term, as well as during the term. Harrell v. Peebles, 79 N. C. 26 (1878). See, also, Shackelford v. Miller, 91 N. C. 181 (1884).

Quoted in Edmundson v. Edmundson, 222 N. C. 181, 22 S. E. (2d) 576 (1942).

Cited in Foard v. Alexander, 64 N. C. 69 (1870); Keener v. Finger, 70 N. C. 35 (1874) (dis. op.); Blue v. Blue, 79 N. C. 69 (1878); Mott v. Commissioners, 126 N. C. 866, 36 S. E. 330 (1900); Marshall v. Kemp, 190 N. C. 491, 130 S. E. 193 (1925).

§ 23. Solicitors and solicitorial districts.—The State shall be divided into twenty-one solicitorial districts, for each of which a solicitor shall be chosen by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf

of the State in all criminal actions in the Superior Courts, and advise the officers of justice in his district. But the General Assembly may reduce or increase the number of solicitorial districts, which need not correspond to, or be the same as, the judicial districts of the State. (Const. 1868; 1941, c. 261.)

Editor's Note.—Section 29 of Article IV of the Constitution of 1868 read as follows prior to its amendment pursuant to c. 261 of the Public Laws of 1941 ratified by vote of the people in November, 1942: "A solicitor shall be elected for each judicial district, by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State, in all criminal actions in the superior courts, and advise the officers of justice in his district."

Public Laws 1927, c. 99, Public Laws 1929, c. 140, and Public Laws 1931, c. 367, proposed amendments to this section which were defeated.

Issuance of Capias.—A solicitor is the most responsible officer of the court and has been spoken of as "its right arm." He is a constitutional officer and his duties are presented by the Constitution. The court has not authority to give the solicitor discretion as to when a capias shall issue, this not being within his duties. State v. McAfee, 189 N. C. 320, 127 S. E. 204 (1925); State v. Carden, 209 N. C. 404, 183 S. E. 898 (1936).

Cited in Rhyne v. Lipscombe, 122 N. C. 650, 29 S. E. 57 (1898); Wilson v. Jordan, 124 N. C. 683, 33 S. E. 139 (1899); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); State v Palmore, 189 N. C. 538, 127 S. E. 599 (1925).

§ **24. Sheriffs and coroners.**—In each county a sheriff and coroner shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold their offices for a period of four years. In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for a period of two years. When there is no coroner in a county, the clerk of the Superior Court for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section, the commissioners of the county may appoint to such office for the unexpired term. (Const. 1868; 1937, c. 241.)

Cross References.—As to sheriffs and constables, see §§ 151-1, 162-1. As to coroners, see § 152-1.

Editor's Note.—The effect of the amendment adopted pursuant to c. 241 of the Public Laws of 1937 was to change the terms of office of the sheriff and coroner from two years to four years.

A sheriff occupies a constitutional public office, and a sheriff takes office, not by contract, but by commission subject to the power of the legislature to fix fees and compensation for which the Constitution does not provide. Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937).

The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938, being in effect on the first Monday in December, the date of the beginning of the term of the sheriffs elected in the 1938 election, their term of office is four years in accordance with the amendment then in effect. Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

Deputy Sheriffs.—While the office of sheriff is provided for by this section, the right of the sheriff to appoint deputies is a common law right and deputies appointed by the sheriff are public officers, but their duties and authority relate only to ministerial duties imposed by law upon the sheriff, in the performance of which they act for the sheriff in his name and right. Gowens v. Alamance County, 216 N. C. 107, 3 S. E. (2d) 339 (1939).

Intention Was Not to Restrict Powers of Constables. — The intention of those who drafted this section, when they wrote, "In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for two years," was not to restrict the powers and duties of the constables to the township in which they were elected, but to intersperse the constables throughout every part of the county. State v. Corpening, 207 N. C. 805, 178 S. E. 564 (1935).

Vacancy after Expiration of Term. — Where a constable was elected in 1875 for two years, and no election was had in 1877 a vacancy occurred which the county commissioners had the power to fill under this section. State v. McLure, 84 N. C. 153 (1881).

Where, before the expiration of his term a sheriff is re-elected but dies before the expiration of that term, the commissioners are entitled to appoint someone to fill the

vacancy for the remainder of the first term and at the beginning of the next term should fill by appointment that vacancy also. People v. Smith, 81 N. C. 304 (1879).

Cited in Boyle v. New Bern, 64 N. C. 664 (1870); Loftin v. Sowers, 65 N. C. 251 (1871); State v. Sigman, 106 N. C. 728, 11 S. E. 520 (1890); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905).

§ **25. Vacancies.**—All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices. (Const. 1868; Convention 1875; 1951, c. 1082.)

Proposed Amendment.—Session Laws 1953, c. 1033, s. 2 proposed that this section be amended by adding the following to the end of the first sentence thereof: "Provided, that when the unexpired term of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next General Election, the Governor shall appoint to fill said vacancy for the unexpired term of said office."

Editor's Note.—This section is § 31 of the Constitution of 1868 as amended by the Convention of 1875 by the addition of the latter portion beginning with the words "for members."

This section was amended by vote at the general election of November 4, 1952.

Limitation on Term Appointed For.— The provisions added to the original section were manifestly made, in view of the decision of the Supreme Court in People v. Wilson, 72 N. C. 155 (1875), and were intended to limit the tenure of the appointees of the chief executive, whether to fill a vacancy caused by the death or resignation of an incumbent, or by the refusal of a person elected to qualify, to the time intervening between the making of the appointment and the next regular election for members of the General Assembly, together with a reasonable interval for qualification. State v. Jones, 116 N. C. 570, 21 S. E. 787 (1895).

Concurrence of Senate Unnecessary. — The general appointing power is given to the Governor with the concurrence of the Senate; the power to fill vacancies, not otherwise provided for, is given to the Governor alone, and that, whether the legislature is in session or not, and without calling the Senate. Nichols v. McKee, 68 N. C. 429 (1873).

Meaning of "Until the Next Regular Election." — The words "until the next regular election," in this section mean until the next regular election for the office in which a vacancy has occurred. People v. Wilson, 72 N. C. 155 (1875).

Refusal of Judge to Accept Office. — Where a person was elected judge of the superior court and declined to accept the office and never qualified there was a vacancy within the meaning of this section and the Governor had the power to fill such vacancy by appointing a successor. People v. Wilson, 72 N. C. 155 (1875).

Constables Not Included. — The provision in this section that "all incumbents of said offices shall hold until their successors are qualified," does not embrace the office of constable. State v. McLure, 84 N. C. 153 (1881).

Associate Justice of Supreme Court.— This section of the Constitution requires that vacancies in the office of associate justice of the Supreme Court shall be filled by the appointment of the Governor, and that "the appointees shall hold their places until the next regular election for members of the General Assembly, when elections shall be held to fill such offices." In re Advisory Opinion, 232 N. C. 737 (appx.), 61 S. E. (2d) 529 (1950).

Cited in State v. Lewis, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890); Ewart v. Jones, 116 N. C. 570, 21 S. E. 787 (1895); Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905); State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906).

§ **26. Terms of office of first officers.**—The officers elected at the first election held under this Constitution shall hold their offices for the terms prescribed for them respectively, next ensuing after the next regular election for members of the General Assembly. But their terms shall begin upon the approval of this Constitution by the Congress of the United States. (Const. 1868.)

Time of First Election.—The next regular election for members of the General Assembly is to be held on the first Thursday in August 1870. Legislative Term of Office. 64 N. C. Appx. 787 (1870).

Cited in Loftin v. Sowers, 65 N. C. 251 (1871); People v. McKee, 65 N. C. 257 (1871); Opinion of Judges, 114 N. C. Appx. 922 (1894).

§ 27. Jurisdiction of justices of the peace.—The several justices of the peace shall have jurisdiction, under such regulations as the General Assembly shall prescribe, of civil actions, founded on contract, wherein the sum demanded shall not exceed two hundred dollars, and wherein the title to real estate shall not be in controversy; and of all criminal matters arising within their counties where the punishment cannot exceed a fine of fifty dollars or imprisonment for thirty days. And the General Assembly may give to the justices of the peace jurisdiction of other civil actions wherein the value of the property in controversy does not exceed fifty dollars. When an issue of fact shall be joined before a justice, on demand of either party thereto he shall cause a jury of six men to be summoned, who shall try the same. The party against whom the judgment shall be rendered in any civil action may appeal to the Superior Court from the same. In all cases of a criminal nature the party against whom the judgment is given may appeal to the Superior Court, where the matter shall be heard anew. In all cases brought before a justice, he shall make a record of the proceedings, and file the same with the clerk of the Superior Court for his county. (Const. 1868; Convention 1875.)

Cross References. — For a thorough treatment of the civil jurisdiction of justices of the peace, see annotations under §§ 7-121 and 7-122. As to their criminal jurisdiction, see annotations under § 7-129. As to punishment for assault, see annotations under § 14-33.

Editor's Note.—This section is § 33 of the Constitution of 1868 with the changes made by the Convention of 1875.

Jurisdiction of Justice.—A justice of the peace can only exercise such powers as are conferred upon him by this section of the Constitution, and the statutes in harmony therewith. His jurisdiction is special, not general, and his authority is not to be enlarged by principles of law applicable to courts of general jurisdiction; nor can he adopt methods of procedure not strictly allowed by law. State v. Jones, 100 N. C. 438, 6 S. E. 655 (1888); Hopkins v. Barnhardt, 223 N. C. 617, 27 S. E. (2d) 644 (1943).

Same—Jurisdiction Concurrent. — The jurisdiction conferred upon justices of the peace to try civil actions, where the property in controversy does not exceed fifty dollars, is concurrent with that possessed by the superior court. Montague v. Mial, 89 N. C. 137 (1883).

Same—Waiver of Objection by Appearance. — Where the defendant is sued on two accounts before a justice of the peace separately stated, each appearing to be in amount coming within his jurisdiction, but together exceeding it, by his appearing and acknowledging his liability for the sum total he thereafter waives his right on appeal to set up the defense that in fact the two accounts were but one. Honig v. Hawa, 194 N. C. 208, 139 S. E. 222 (1927).

Section Does Not Embrace Damages. —The provisions in this section, authorizing the General Assembly to give the justices of the peace "jurisdiction of other civil actions wherein the property in controversy does not exceed fifty dollars," is not a restriction, even by implication, to forbid conferring jurisdiction where damages and not property is in controversy. Malloy v. Fayetteville, 122 N. C. 480, 29 S. E. 880 (1898).

Contempt.—The constitutional restriction imposed by this section applies only to the administration of the law in the trial of criminal cases, and were not intended to affect the inherent or statutory powers possessed by these courts and conferred upon them as necessary to enable them to transact business and maintain a proper respect for their authority. C. S., 981, 983. State v. Hooker, 183 N. C. 763, 111 S. E. 351 (1922).

Criminal Appeals. — The clause of this section providing that in criminal cases in a justice's court, "the party against whom judgment is given may appeal to the superior court, where the matter shall be heard anew," is for the benefit only of the party accused. State v. Powell, 86 N. C. 640 (1882).

Appeal May Be Direct to Superior Court.—It is not required that an appeal from a judgment of the justice of the peace be first taken to the general county court of the county, but the appeal may be taken directly to the superior court. Mc-

Neeley v. Anderson, 206 N. C. 481, 174 S. E. 305 (1934).

Trial in the superior court is on the original warrant without indictment. State v. Thomas, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

"Thirty Days."—"Thirty days," as used in this section, is not synonymous with "one month": It may be more or less. State v. Upchurch, 72 N C. 146 (1875).

Legislature Cannot Confer Justice's Powers on Mayor.—The legislature cannot confer on the mayor of a town the judicial powers of a justice of the peace in civil actions. This section confers exclusive original jurisdiction on justice of the peace wherever the sum demanded does not exceed two hundred dollars. Edenton v. Wool, 65 N. C. 379 (1871). But see Editor's Note, supra.

Establishment of Special Courts.—This section should be construed with §§ 12 and 14, and the latter sections modify the first named so as to authorize and empower the legislature to establish special courts in cities and towns and confer jurisdiction upon them without regard to its provisions and limitations. State v. Baskerville, 141 N. C. 811, 53 S. E. 742 (1906); Farmers Cotton Oil Co. v. Blue Ridge Gro. Co., 169 N. C. 521, 86 S. E. 338 (1915). See also, State v. Doster, 157 N. C. 634, 73 S. E. 111 (1911).

Justice's Courts Are Not Courts of Record. — Justice's courts are not courts of record. Williams v. Bowling, 111 N. C. 295, 16 S. E. 176 (1892).

In summary proceeding in ejectment, based upon affidavit that defendant had entered into possession of house and lot and refused to vacate the house, justice of peace had no jurisdiction in absence of allegation that relationship of landlord and tenant existed and that defendant was holding over. Howell v. Branson, 226 N. C. 264, 37 S. E. (2d) 687 (1946).

Applied in Froelich v. Southern Exp. Co., 67 N. C. 1 (1872); State v. Vermington, 71 N. C. 264 (1874); State v. Dudley, 83 N. C. 660 (1880); Singer Sewing Machine Co. v. Burger, 181 N. C. 241, 107 S. E. 14 (1921).

Cited in Wilmington v. Davis, 63 N. C. 582 (1869); State v. Deaton, 65 N. C. 496 (1871); Froelich v. Southern Exp. Co., 67 N. C. 1 (1872); State v. Perry, 71 N. C. 522 (1874); State v. Buck, 73 N. C. 630 (1875); Pullen v. Green, 75 N. C. 215 (1876); State v. Threadgill, 76 N. C. 17 (1877); Heyer v. Beatty, 76 N. C. 28 (1877); London v. Headen, 76 N. C. 72 (1877); State v. Edney, 80 N. C. 360 (1879); State v. Moore, 82 N. C. 660 (1880); State v. Watts, 85 N. C. 517 (1881); State v. Crook, 91 N. C. 536 (1884); Durham v. Wilson, 104 N. C. 595, 10 S. E. 683 (1889); State v Burton, 113 N. C. 655, 18 S. E. 657 (1893); State v. Ivie, 118 N. C. 1227, 24 S. E. 539 (1896); McDonald v. Morrow, 119 N. C. 66, 26 S. E. 132 (1896); Wilson v. Jordan, 124 N. C. 683, 3 S. E. 39 (1899); Mott v. Commissioners, 126 N. C. 866, 36 S. E. 330 (1900); State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905); Higgs-Loft Furniture Co. v. Clark, 191 N. C. 369, 131 S. E. 731 (1926); Roebuck v. Short, 196 N. C. 61, 144 S. E. 515 (1928); Miles v. Powell, 205 N. C. 30, 169 S. E. 828 (1933); State v. Wilkes, 233 N. C. 645, 65 S. E. (2d) 129 (1951).

§ **28. Vacancies in office of justices.**—When the office of justice of the peace shall become vacant otherwise than by expiration of the term, and in case of a failure by the voters of any district to elect, the clerk of the Superior Court for the county shall appoint to fill the vacancy for the unexpired term. (Const. 1868.)

Conferring Authority on Governor.—A statute, conferring authority upon the Governor to fill vacancies in the office of justices of the peace, caused by the failure of the appointees of the General Assembly to qualify within the time therein prescribed, is not unconstitutional. Gilmer v. Holton, 98 N. C. 26, 3 S. E. 812 (1887).

Appointments Must Be Made by Clerk of Superior Court.—An examination of the Constitution reveals the fact that the only power or duty of a clerk of the superior court mentioned therein is in this section, which provides that vacancies in the office of justice of the peace shall be filled by appointment by the clerk of the superior court, and this function of the office, we apprehend, must still be performed by the clerk alone. In re Barker, 210 N. C. 617, 188 S. E. 205 (1936).

§ **29. Vacancies in office of Superior Court clerk.**—In case the office of clerk of a Superior Court for a county shall become vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the judge of

the Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held. (Const. 1868.)

Term of Appointee.—Under this section the appointee of the judge holds only until the next election at which members of the General Assembly are chosen. Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905).

Cited in Rodwell v. Rowland, 137 N. C. 617, 50 S. E. 319 (1905).

§ 30. Officers of other courts inferior to Supreme Court.—In case the General Assembly shall establish other courts inferior to the Supreme Court, the presiding officers and clerks thereof shall be elected in such manner as the General Assembly may from time to time prescribe, and they shall hold their offices for a term not exceeding eight years. (Convention 1875.)

Editor's Note.—This section was added by the Convention of 1875.

Legislature May Elect Clerk.—Where a criminal court is created the legislature could either elect the clerk itself or devolve his election upon the people, or other constituency. White v. Murray, 126 N. C. 153, 35 S. E. 256 (1900).

May Provide for Election of Officers of County Courts.—Under the provisions of this section, the legislature is authorized to provide for the election of officers and clerks of general county courts established by it, such courts being "other courts inferior to the Supreme Court" referred to in Art. IV, §§ 2 and 14. Meador v. Thomas, 205 N. C. 142, 170 S. E. 110 (1933).

The word "election" does not necessarily import a popular election by the qualified electors, and the delegation of the power to elect judges of the general county courts to the county commissioners is not an unlawful delegation of legislative power, this section providing that they "shall be elected in such manner as the General Assembly may prescribe." Meador v. Thomas, 205 N. C. 142, 170 S. E. 110 (1933).

Deprivation of Inferior Judge's Office.—Where the legislature has abolished a court inferior to the superior court of this State, the incumbent judge takes subject to this legislative right, and cannot successfully maintain that during the term of his office he has been thus deprived of his right of property guaranteed him by this section. Queen v. Comm'rs, 193 N. C. 821, 138 S. E. 310 (1927).

Cited in Ewart v. Jones, 116 N. C. 570, 21 S. E. 787 (1895).

§ 31. Removal of judges of the various courts for inability.—Any judge of the Supreme Court, or of the Superior Courts, and the presiding officers of such courts inferior to the Supreme 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 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. (Convention 1875.)

Editor's Note.—This section was added by the Convention of 1875.

Cited in People v. Smith, 81 N. C. 304 (1879).

§ 32. Removal of clerks of the various courts for inability.—Any clerk of the Supreme Court, or of the Superior Courts, or of such courts, inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability; the clerk of the Supreme Court by the judges of said court, the clerks of the Superior Courts by the judge riding the district, and the clerks of such courts inferior to the Supreme Court as may be established by law by the presiding officers of said courts. The clerk against whom proceedings are instituted shall receive notice thereof, accompanied by a copy of the cause alleged for his removal, at least ten days before the day appointed to act thereon, and the clerk shall be entitled to an appeal to the next term of the Superior Court and thence to the Supreme Court as provided in other cases of appeals. (Convention 1875.)

Editor's Note.—This section was added by the Convention of 1875.

Quoted in Stephens v. Dowell, 208 N. C. 555, 181 S. E. 629 (1935), wherein city commissioners were held without authority to dismiss clerk of municipal court without notice and opportunity to be heard.

§ 33. Amendments not to vacate existing offices.—The amendments made to the Constitution of North Carolina by this convention shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled, or held, by virtue of any election or appointment under the said Constitution and the laws of the State made in pursuance thereof. (Convention 1875.)

Editor's Note.—This section was added by the Convention of 1875.

Legislature May Diminish Emoluments.—The legislature has the constitutional power to diminish the emoluments of an office by the transfer of a portion of its duties to another office, and in such case the incumbent must submit. State v. Gales, 77 N. C. 283 (1877).

Cited in Opinion of Judges, 114 N. C. Appx. 922 (1894).

ARTICLE V

REVENUE AND TAXATION

§ 1. Capitation tax; exemptions.—The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity. (Const. 1868; Ex. Sess. 1920, c. 93.)

Cross Reference.—For article on property and poll tax limitations under this section and § 6 of this article, see 18 N. C. Law Rev. 275.

Editor's Note. — This section was changed pursuant to c. 93, Public Laws of 1920, extra session, from § 1 in the Constitution of 1868 which was as follows: "The General Assembly shall levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which shall be equal on each, to the tax on property value at three hundred dollars in cash. The commissioners of the several counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the State and county capitation tax combined shall never exceed two dollars on the head."

Effect of Amendment on Bonds Purchased Prior Thereto. — The amendment will not have the effect of relating back and invalidating taxation on the polls in a school district which had met the constitutional requirement before the amendment had become the law; for such would have the effect of impairing vested rights existing under a valid contract. Hammond v. McRae, 182 N. C. 747, 110 S. E. 102 (1921); Board v. Bray Bros. Co., 184 N. C. 484, 115 S. E. 47 (1922).

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 (1931).

The Constitution does not require that a capitation tax shall be levied for ordinary State and county purposes. Jones v. Commissioners, 107 N. C. 248, 12 S. E. 69 (1890).

Taxation for State and County Purposes Limited.—Taxation, for State and county purposes combined, for the current and necessary expenses of the county government and new debts, cannot exceed the constitutional limitation. French v. Board, 74 N. C. 692 (1876); Southern R. Co. v. Board, 148 N. C. 220, 61 S. E. 690 (1908).

No Limit on Taxation for Payment of Debts.—There is no limitation, however, of the power of taxation, upon either State or county, for the payment of their lawful debts, created before the adoption of the Constitution. Brothers v. Commissioners, 70 N. C. 726 (1874); French v. Board, 74 N. C. 692 (1876).

When Limitation May Be Exceeded. — Without special legislation a county may not authorize a levy of tax, exceeding the constitutional limitation upon the poll or property, to provide for a sinking fund to pay the principal and interest on bonds to be issued by it for highway purposes. It is otherwise as to a six months' period of public schools required by Article IX, § 3 Bennett v. Board, 173 N. C. 625, 92 S. E. 603 (1917). See, also, Ballou v. Board, 182 N. C. 473, 109 S. E. 628 (1921).

The limitation as to the levy on poll tax

prescribed by this section, does not apply to the levy of a special tax by a county for road purposes, authorized by the legislature submitted to the vote of the electors of the county and duly approved by them. Moose v. Board, 172 N. C. 419, 90 S. E. 441 (1916).

Section Does Not Apply to Municipal Corporations. — The restriction that the State and county tax combined shall never exceed $2 on the poll, applies only to State and county taxation, and not to municipal or quasi-public corporations other than counties. Perry v. Commissioners, 148 N. C. 521, 62 S. E. 608 (1908).

Cited in University R. Co. v. Holden, 63 N. C. 410 (1869) (con. op.); Street v. Board, 70 N. C. 664 (1874); Clifton v. Wynne, 80 N. C. 146 (1879); Cromartie v. Commissioners, 85 N. C. 211 (1881); Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889); Redmond v. Tarboro, 106 N. C. 122, 10 S. E. 845 (1890); Board v. Commissioners, 137 N. C. 310, 49 S. E. 353 (1904); Pace v. Raleigh, 140 N. C. 65, 52 S. E. 277 (1905); Kitchen v. Wood, 154 N. C. 565, 70 S. E. 995 (1911); Ingram v. Johnson, 172 N. C. 676, 90 S. E. 805 (1916); Parvin v. Board, 177 N. C. 508, 99 S. E. 432 (1919); Director General v. Commissioners, 178 N. C. 449, 101 S. E. 91 (1919).

§ 2. Application of proceeds of State and county capitation tax.— The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose. (Const. 1868.)

Section Only Applies to General Purposes.—An objection that an act applies a part of the county capitation tax to the use of the public roads in violation of this section, which appropriates the State and county poll tax "to the purposes of education and the support of the poor," can not be sustained, as that provision applies to the levy of taxation for general, not special, purposes. Crocker v. Moore, 140 N. C. 429, 53 S. E. 229 (1906).

Percentage Devoted to School Purpose. — Not less than 75 per cent of the capitation tax must be devoted to school purposes. Board v. Board, 127 N. C. 263, 37 S. E. 261 (1900).

Power of Legislature as to Indigents.— It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

Cited in Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889); Redmond v. Tarboro, 106 N. C. 122, 10 S. E. 845 (1890); Board v. Commissioners, 137 N. C. 310, 49 S. E. 353 (1904); County Board v. Board, 150 N. C. 116, 63 S. E. 724 (1909); Waystaff v. Central Highway Comm., 177 N. C. 354, 99 S. E. 1 (1919) (con. op.).

§ 3. 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 on property shall be uniform as to each class of property taxed. Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied. The General Assembly may also tax trades, professions, franchises, and incomes: Provided, the rate of tax on income shall not in any case exceed ten per cent (10%), and there shall be allowed the following exemptions, to be deducted from the amount of annual incomes, to wit: for a married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than $2,000; to all other persons not less than $1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed. (Const. 1868; 1917, c. 119; Ex. Sess. 1920, c. 93; Ex. Sess. 1924, c. 115; 1935, c. 248.)

Editor's Note.—Section 3 of the Constitution of 1868 read as follows: "Sec. 3 Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise; and, also, all real and personal property according to its true value in money. The General Assembly may also tax trades, professions, franchises, and incomes, provided that no income shall be taxed when the property, from which the income is derived, is taxed."

The first amendment was made pursuant to c. 119, Public Laws of 1917, by the addition of the following proviso after the word "money": Provided, notes, mort-

gages, and all other evidence of indebtedness given in good faith for the purchase price of a home, when said purchase price does not exceed three thousand dollars, and said notes, mortgages, and other evidence of indebtedness shall be made to run for not less than five nor more than twenty years, shall be exempt from taxation of every kind: Provided, that the interest carried by such notes and mortgages shall not exceed five and one-half per cent."

The second amendment was made pursuant to c. 93, Public Laws of 1920, extra session, by the repeal of the clause "provided that no income shall be taxed when the property, from which the income is derived, is taxed" and the addition of the proviso beginning with the words "Provided, the rate of tax on incomes."

The third amendment was made pursuant to c. 115, Public Laws of 1924, extra session. The proviso added in 1917 was repealed and for it was substituted the three provisos now appearing as the second paragraph of § 3. Chapter 248, Public Laws of 1935, repealed the entire section except for the last sentence and provisos, and substituted the present first three sentences in lieu thereof.

For a brief discussion of this section, see 25 N. C. Law Rev. 504.

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, 169 S. E. 149 (1933).

The word "trades" as used in this section means any employment or business engaged in for gain or profit. Nesbitt v. Gill, 227 N. C. 174, 41 S. E. (2d) 646 (1947).

The purchase of horses or mules for the purpose of resale, at wholesale or retail, is a trade within the meaning of this section, and the imposition of a license tax on such trade is valid. Nesbitt v. Gill, 227 N. C. 174, 41 S. E. (2d) 646 (1947).

The power to levy taxes is the exclusive province of the legislature, and the superior court has no jurisdiction of an action, the nature and purpose of which is to discover, to list and assess for taxation, property which has escaped taxation. Henderson County v. Smyth, 216 N. C. 421, 5 S. E. (2d) 136 (1939).

Taxes can be levied only for public purposes. Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

There can be no lawful tax which is not levied for a public purpose. Nash v. Tarboro, 227 N. C. 283, 42 S. E. (2d) 209 (1947).

Meaning of "Public Purpose." — A tax or an appropriation is for a public purpose if it is for the support of the government, or for any of the recognized objects of the government. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500. As to what are "public purposes," for which a municipality may levy taxes, see 25 N. C. Law Rev. 504.

"Public purpose, as we conceive the term to imply, when used in connection with the expenditure of municipal funds from the public treasury, refers to such public purpose within the frame of governmental and proprietary power given to the particular municipality, to be exercised for the benefit, welfare and protection of its inhabitants and others coming within the municipal care. It involves reasonable connection with the convenience and necessity of the particular municipality whose aid is extended in its promotion." Nash v. Tarboro, 227 N. C. 283, 42 S. E. (2d) 209 (1947), quoting Greensboro-High Point Airport Authority v. Johnson, 226 N. C. 1, 36 S. E. (2d) 803 (1946).

The fact that moneys are paid to an individual does not affect the character of the expenditure, since the object of the expenditure and not to whom paid determines whether it is for a public purpose. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500.

What May Be Taxed. — All taxes must be levied upon the poll or upon property; or, in the nature of a license, upon "trades, professions, franchises and incomes." State v. Ballard, 122 N. C. 1024, 29 S. E. 899 (1898).

Under this section all property, real and personal, is subject to taxation, unless exempt from taxation by the Constitution. Hardware Mut. Fire Ins. Co. v. Stinson, 210 N. C. 69, 185 S. E. 449 (1936).

What "Property" Includes. — It seems that the word "property" is used by the Constitution in a sense to make it exclude "money, credits, investments in bonds," etc. Pullen v. Raleigh, 68 N. C. 451 (1873).

The words "all real and personal property," in this section are to be taken in their most comprehensive legal import, and include every kind of real and personal property whatever, not excepting the several

classes of personal property expressly mentioned in the first clause of the section. Redmond v. Commissioners, 106 N. C. 123, 10 S. E. 845 (1890).

This section includes both tangible property, and taxes on "trades, professions, franchises, and incomes." Great Atlantic & Pacific Tea Co. v. Doughton, 196 N. C. 145, 144 S. E. 701 (1928).

Property Is Taxable without Regard to Ownership.—In Latta v. Jenkins, 200 N. C. 255, 156 S. E. 857 (1931), it is said: By virtue of the provisions of this section, all property, real and personal, in this State, is subject to taxation, in accordance with a uniform rule, under laws which the General Assembly is required by the Constitution to enact, without regard to its ownership, and without regard to the purposes for which specific property is held, unless exempted by or under the provisions of § 5 of this article. Salisbury Hospital v. Rowan County, 205 N. C. 8, 169 S. E. 805 (1933).

Equality in Levying of Excise Tax. — Section 11, c. 127, Public Laws 1937, cannot be construed as imposing an excise tax upon the receipt of proceeds of life insurance policies issued to the beneficiary who retains all rights and liabilities thereunder, in addition to imposing an inheritance tax on the proceeds of policies issued to the insured or in which he retains some incidents of ownership, since such excise tax would have to be computed in accordance with graduated scale on the basis of the amount of insurance together with the value of the estate or the legacy or the distributive share, and thus would produce inequality in the levying of such excise tax in contravention of this section. Wachovia Bank, etc., Co. v. Maxwell, 221 N. C. 528, 20 S. E. (2d) 840 (1942).

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, 168 S. E. 397 (1933).

Under this section which limits income taxes to a maximum of six per cent, any attempted increase in productivity of this field of revenue had to come at the expense of the small income man, and this is what has happened. See 11 N. C. Law Rev. 255.

Tax Must Be Uniform. — This section imperatively requires that all real and personal property be taxed by a uniform rule according to its true value in money. Pocomoke Guano Co. v. Biddle, 158 N. C. 212, 73 S. E. 996 (1912).

The only constitutional restriction upon the power of the legislature in classifying vocations and laying a tax of a different amount upon the different occupations is that the tax shall be uniform upon all in each classification. Dalton v. Brown, 159 N. C. 175, 75 S. E. 40 (1912).

Chapter 30, Public Laws of 1937, providing for the licensing of dry cleaners and pressers by the commission set up in the act, construed in pari materia with c. 337, Public Laws of 1939, exempting from the provision of the act fourteen counties of the State, is held unconstitutional, whether the license fee therein imposed in addition to the license prescribed by the revenue act be considered a State tax or not, since it places a burden upon those engaged in the specified business in a portion of the State which is not imposed upon those engaged in the same business in other parts of the State without any reasonable basis of classification, and therefore discriminates within the class and accords a privilege and immunity to some not accorded to others. State v. Harris, 216 N. C. 746, 6 S. E. (2d) 854, 128 A. L. R. 658 (1940).

When Tax Is Uniform. — A tax is uniform when it is equal upon all persons belonging to the described class upon which it is imposed. Gatlin v. Tarboro, 78 N. C. 119 (1878); State v. Danenberg, 151 N. C. 718, 66 S. E. 301, 26 L. R. A. (N. S.) 890 (1909); Leonard v. Maxwell, 216 N. C. 89, 3 S. E. (2d) 316 (1939).

A tax is uniform and consistent with this section when it is equal on all persons in the same class, and hence a tax imposed on hotel keepers, which exempts from taxation those whose yearly receipts are less than $1,000, is not unconstitutional. Cobb v. Commissioners, 122 N. C. 307, 30 S. E. 338 (1898).

Municipal Airport Is Public Purpose.— The construction and maintenance of a municipal airport for a city of more than ten thousand inhabitants, engaged in many industries and pursuits, is for a public purpose within the meaning of this section, and no right guaranteed by the 14th Amendment to the federal Constitution will be injuriously affected thereby. Turner v. Reidsville, 224 N. C. 42, 29 S. E. (2d) 211 (1944); Reidsville v. Slade, 224 N. C. 48, 29 S. E. (2d) 215 (1944).

A tax imposed to raise moneys for Employees' Retirement Fund is for a public purpose and the act provides benefits to thousands of teachers and employees of this State without discrimination, and therefore the tax does not offend this sec-

tion. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The construction, maintenance and operation of a public hospital by a county is a public purpose for which funds may be provided by taxation under this section. Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

An expenditure by a municipality for special training of a police officer is for a public purpose. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500.

The cost of constructing and maintaining a hotel is not a public purpose, within the meaning of this section. Nash v. Tarboro, 227 N. C. 283, 42 S. E. (2d) 209 (1947).

Whom Tax on Occupation Must Reach. —A tax upon an occupation must reach all who follow it—all of a class, either of persons or things. Worth v. Petersburg R. Co., 89 N. C. 301 (1883).

Reasonableness of Classification. — See notes under §§ 105-98, 105-118.

The power of the legislature to classify subjects for the purpose of taxation is flexible, and the reasonableness of any classification will generally be construed with reference to the facts of the particular case, the predominant limitation on the power to classify being that the classification must be reasonable and not arbitrary and must rest upon some substantial difference between the classes, and that the burden must be equal upon all in the same class, and a special classification by statute of wholesale grocers operating a cold storage chamber of some character for the preservation of fresh meats, as distinguished from those who handled only canned meats not requiring refrigeration, is a reasonable classification imposing an equal burden upon all of the class, and is constitutional and valid. Southern Grain Provision Co. v. Maxwell, 199 N. C. 661, 155 S. E. 557 (1930).

The classification must not be arbitrary or unjust, but must be based on substantial and reasonable differences between such classes. Great Atlantic & Pacific Tea Co. v. Doughton, 196 N. C. 145, 144 S. E. 701 (1928).

While the provisions of this section do not expressly apply to taxes on trades, professions, franchises and incomes, it does apply to such taxes from its inherent justice, but the General Assembly has the power to classify trades, professions, franchises and incomes for taxation where the classifications are reasonable and not arbitrary and are based upon substantial differences between the classes and apply equally to all within the classification. Great A. & P. Tea Co. v. Maxwell, 199 N. C. 433, 154 S. E. 838 (1930).

The classification of subjects for taxation must be based upon reasonable distinctions and must apply equally to all within each class defined. Snyder v. Maxwell, 217 N. C. 617, 9 S. E. (2d) 19 (1940). This rule applies to municipal corporations taxing trades or professions. Kenny Co. v. Brevard, 217 N. C. 269, 7 S. E. (2d) 542 (1940).

Wide Latitude Accorded Taxing Authorities. — The power to classify subjects of taxation carries with it the discretion to select them, and a wide latitude is accorded taxing authorities, particularly in respect of occupational taxes, under the power conferred by this section of the Constitution of North Carolina. Charlotte Coca-Cola Bottling Co. v. Shaw, 232 N. C. 307, 59 S. E. (2d) 819 (1950).

Classification of Mechanical Vending Devices. — While the legislature may not classify mechanical vending machines in accordance with the kinds of merchandise sold by such machines in levying privilege taxes on their use, since the manner in which the article is sold is the same in all instances and the economic advantages in this method of sale may be regarded as the same, it may classify mechanical vending devices for the purpose of taxation and make a further classification or sub-classification in accordance with the quantity or kind of commodities sold by such method when such classifications are based upon real and reasonable distinctions. Snyder v. Maxwell, 217 N. C. 617, 9 S. E. (2d) 19 (1940).

Classifying Dealers in Different Kinds of Merchandise. — The requirement of this section that all taxes shall be uniform does not prohibit a municipality, which is empowered to tax persons engaged in mercantile business, from classifying dealers in a particular kind of merchandise, separately from those whose business it is to sell other articles falling within the same generic terms. Rosenbaum v. New Bern, 118 N. C. 83, 24 S. E. 1 (1896).

Tax Based on Volume of Business.—A tax levied quarterly by a town, under authority of an act of the General Assembly, upon all traders doing business in the town, "of $1 for every $1,000 worth of goods sold during the preceding quarter," is uniform and constitutional. Gatlin v. Tarboro, 78 N. C. 119 (1878).

Tax Based on Counties in Which a Firm

Does Business.—An act taxing every meat packing house doing business in the State $100 for each county in which such business is carried on is valid. Lacy v. Armour Packing Co., 134 N. C. 567, 47 S. E. 53 (1904).

Basing Taxes on Size of City in Which Business Located.—In act imposing an annual graduated license tax on the business of buying and selling fresh meats from offices, stores, vehicles, etc., in cities of 12,000, 8,000, and under 8,000 inhabitants, respectively, is not unconstitutional, as not being uniform and in not imposing a license if the business is carried on outside a city or town; it being uniform as to all within each class. State v. Carter, 129 N. C. 560, 40 S. E. 11 (1901).

Taxing Shares of Stock in a National Bank.—Shares of stock in a national bank are proper subjects of State, county and municipal taxation. Such shares owned by nonresidents are to be taxed in the city or town where the bank is located and not elsewhere. Kyle v. Commissioners, 75 N. C. 445 (1876).

Taxing Cotton by Bale.—An act to provide improved marketing facilities for cotton, which enacts that on each bale of cotton ginned in North Carolina for two years, twenty-five cents shall be collected to specially guarantee the State warehouse system against loss, is not in derogation of this section. Bickett v. State Tax Comm., 177 N. C. 433, 99 S. E. 315 (1919).

Tax on Indictments. — A tax on indictments, civil suits, etc., is not a tax within the meaning of this section. State v. Nutt, 79 N. C. 263 (1878).

Inheritance Tax.—An inheritance tax is in the nature of an excise tax, or one on acquiring property or inheriting from a decedent, and does not come within the prohibition as to taxing an income upon property when the property itself is taxed and its imposition rests with the legislative power. In re Davis, 190 N. C. 358, 130 S. E. 22 (1925).

License on Business of Hauling Timber.—An act requiring a license of anyone who carries on the business of hauling timber in a certain county, grading the license with reference to the number of horses driven to the wagon used is not repugnant to this section. State v. Bullock, 161 N. C. 223, 75 S. E. 942 (1912).

Zoning Cities.—An act authorizing the division of a city into several zones for the purpose of fixing an ad valorem basis of real estate for taxation, uniform within each zone, but classified in accordance with density of population, character of building, etc., violates the mandatory provisions of our Constitution that within its corporate limits all taxable property shall be by a uniform rule and ad valorem. Anderson v. Asheville, 194 N. C. 117, 138 S. E. 715 (1927).

Exception of Farm Products.—The exception of "farm products purchased from the producer" from the return required to be made by merchants and other dealers as the basis for a license tax is not a discrimination against the products or citizens of other states; nor is it in violation of the provisions of this section which requires uniformity of taxation. State v. Stevenson, 109 N. C. 730, 14 S. E. 385 (1891); Ex parte Brown, 48 F. 435 (1891).

Railroad Property May Be Assessed by Corporation Commission.—An act providing for the assessment of railroad property by the Corporation Commission, is not in conflict with this section providing that such assessment be uniform and ad valorem. Atlantic, etc., R. Co. v. New Bern, 147 N. C. 165, 60 S. E. 925 (1908).

Requiring Railroads to Pay State Taxes Earlier. — The provisions requiring railroads and other like corporations to pay their State taxes within a shorter period than those to the counties, is a uniform legislative classification applying equally to all within its terms and not objectionable as a discrimination or a denial of the equal protection of the laws prohibited by this section. Norfolk Southern R. R. Co. v. Lacy, 187 N. C. 615, 122 S. E. 763 (1924).

Exemptions from Taxation.—The legislature in exempting property from taxation, Art. V, § 5, is required to observe the basic principle of equality, and exemptions allowed by it must be uniform within the class as required by this section, both before and after its amendment in 1936. Sir Walter Lodge, etc. v. Swain, 217 N. C. 632, 9 S. E. (2d) 365 (1940).

Exempting Bonds of Drainage District from Taxation. — Drainage districts are not regarded as municipal corporations, and a legislative act exempting their bonds from taxation violates the uniform rule as to taxation required by this section. Commissioners v. Webb & Co., 160 N. C. 594, 76 S. E. 552 (1912).

Exemption of Property and Bonds of Municipality.—A legislative provision exempting the property and bonds of a city from taxation is valid when the bonds are to be issued for a public purpose, and certainly the bonds are exempt from taxation if sold to and held by an agency of the

United States government, or are held by a purchaser from such federal agency. Any doubt as to the validity of this provision under this section must be resolved in favor of its validity. Webb v. Port Comm., 205 N. C. 663, 172 S. E. 377 (1934). See § 5 of this article.

Taxes Reduced if Assets Returned for Taxes.—An act imposing license taxes on the business of selling automobiles reducing the rate if three fourths of the entire assets of the manufacturer are invested and returned for taxes herein, applies indiscriminately to the manufacturers of every state, and being for the object of reducing the license tax for selling automobiles in this State when the seller is already paying a tax here on three fourths of his assets, is not violative. Bethlehem Motors Corp. v. Flynt, 178 N. C. 399, 100 S. E. 693 (1919).

Local Assessment Based on Benefits.—The constitutional provision that taxation shall be equal, uniform, and within certain limits, does not apply to local assessments imposed upon owners of property, who in respect to such ownership are to derive a special benefit in the local improvements for which the tax is expended. Cain v. Commissioners, 86 N. C. 8 (1882).

While assessments on lands abutting on streets improved are not required to be uniform with all other subjects of taxation, and in view of the particular benefits, such must be uniform as to all property owners within that class to meet the constitutional requirements. Gastonia v. Cloninger, 187 N. C. 765, 123 S. E. 76 (1924).

Making Taxing District of Each Improved Street.—Where the charter of a city provides that each street or portion of a street improved shall be a taxing district, by requiring the total cost of improvement on each street or portion of street improved to be ascertained and one third thereof assessed on the property abutting on each side of the street, according to the frontage of each lot, and also provides methods whereby each lot owner may contest the assessment, such charter is not in violation of this section, requiring a uniform rule of taxing an estate according to its value in money. Hillard v. Asheville, 118 N. C. 845, 24 S. E. 738 (1896).

Providing for Collection of Taxes for Past Years.—A law to provide for the collection of taxes for past years does not violate the provisions of this section in regard to uniformity of taxation. North Carolina R. Co. v. Commissioners, 82 N. C. 260 (1880).

The tax levied under § 105-167, subsec. 13, was held not void as discriminatory in amount because of the provision of the section that such tax need not be paid when the owner furnishes a certificate from a dealer in this State to the effect that the tax has been paid, and that such dealer will be responsible therefor to the Commissioner of Revenue, since the section requires the same amount to be paid regardless of whether the car is purchased from a dealer within or outside the State. Powell v. Maxwell, 210 N. C. 211, 186 S. E. 326 (1936).

Special License Tax on Real Estate Brokers Discriminatory. — Chapter 241, Public-Local Laws 1927, requiring real estate brokers in certain designated counties to be licensed by a real estate commission on the basis of moral character and proficiency in the public interest, and requiring payment of a license fee in addition to the State-wide license required, is unconstitutional as it applies only to the real estate brokers in the designated counties and is therefore discriminatory. State v. Warren, 211 N. C. 75, 189 S. E. 108 (1937).

When Lien Attaches.—The lien for the payment of taxes assessed against personal property attaches only from the date of levy thereon. Carstarphen v. Plymouth, 186 N. C. 90, 118 S. E. 905 (1923).

Enjoining Collection of Income Tax.—A bill of equity to restrain the assessment and collection of the income tax provided by this section, and the collection and enforcement of certain franchise or privilege taxes as unconstitutional, does not warrant interlocutory injunctions. Southern R. Co. v. Watts, 289 F. 301 (1923).

Interference by Courts.—This section of the Constitution vests exclusive authority in the legislature to levy taxes, which may not be interfered with by the courts. Person v. Board, 184 N. C. 499, 115 S. E. 336 (1922).

Applied in Hilton v. Harris. 207 N. C. 465, 177 S. E. 411 (1934); State v. Bridgers, 211 N. C. 235, 189 S. E. 869 (1937).

Quoted in Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936); Bowie v. West Jefferson, 231 N. C. 408, 57 S. E. (2d) 369 (1950).

Cited in Carolina Cent. R. Co. v. Wilmington, 72 N. C. 73 (1875); Wilson v. Board, 74 N. C. 748 (1876); Albertson v. Wallace, 81 N. C. 479 (1879); Richmond, etc., R. Co. v. Commissioners, 84 N. C. 504 (1881) (con. op.); Raleigh v. Peace, 110 N. C. 32, 14 S. E. 521 (1892); Wiley v. Board, 111 N. C. 397, 16 S. E. 542 (1892);

Charlotte Bldg., etc., Ass'n v. Commissioners, 115 N. C. 410, 20 S. E. 526 (1894); Schaul v. Charlotte, 118 N. C. 733, 24 S. E. 526 (1896); Collins v. Pettitt, 124 N. C. 726, 32 S. E. 975 (1899) (dis. op.); State v. Roberson, 136 N. C. 587, 48 S. E. 595 (1904); Wolfender v. Board, 152 N. C. 83, 67 S. E. 319 (1910); State v. Williams, 158 N. C. 610, 73 S. E. 1000 (1912); Leonard v. Sink, 198 N. C. 114, 150 S. E. 813 (1929); Hickory v. Catawba County, 206 N. C. 165, 173 S. E. 56 (1934); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934); Raleigh v. Jordan, 218 N. C. 55, 9 S. E. (2d) 507 (1940) (dis. op.); Rockingham County v. Elon College, 219 N. C. 342, 13 S. E. 618 (1941); Belk's Dept. Store v. Guilford County, 222 N. C. 441, 23 S. E. (2d) 897 (1943); Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950); Southern R. Co. v. Watts, 260 U. S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923); Horner v. Chamber of Commerce, 235 N. C. 77, 68 S. E. (2d) 660 (1952).

§ 4. Limitations upon the increase of public debts.—The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit 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, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's 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 for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon. (Const. 1868; 1923, c. 145; 1935, c. 248.)

Editor's Note. — This section as contained in the Constitution of 1868 was as follows: "Until the bonds of the State shall be at par, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall in the same bill levy a special tax to pay the interest annually. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon." This section was § 5 of Article V of the original Constitution, but with the repeal of the original § 4 pursuant to c. 85 of the Laws of 1872-73 this section was renumbered to be § 4. By virtue of an amendment adopted pursuant to c. 145 of the Public Laws of 1923, the first sentence was stricken out and the following inserted in lieu thereof: "Except for refunding of valid bonded debt, and except to supply a casual deficit, or for suppressing invasions or insurrections, the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the State to an amount exceeding in the aggregate, including the then existing debt recognized by the State, and deducting sinking funds

then on hand, and the par value of the stock in the Carolina Railroad Company and the Atlantic and North Carolina Railroad Company owned by the State, seven and one-half per cent of the assessed valuation of taxable property within the State as last fixed for taxation." Pursuant to c. 248 of the Public Laws of 1935 this section was entirely rewritten in its present form. For article discussing that amendment, see 16 N. C. Law Rev. 329. Many of the cases cited below were decided prior to the amendment.

Proposed Amendment. — The amendment of this section proposed by Session Laws 1947, c. 784, failed of adoption at the general election held on November 2, 1948.

Purpose.—As to the purpose of this section, see Pennington v. Tarboro, 180 N. C. 438, 105 S. E. 199 (1920) (dis. op.).

The language of this section is unambiguous, and by its plain terms the power of the State, or any county or municipality to contract debts in any biennium or fiscal year, respectively, without submitting the matter to a vote of the people, except for those purposes specifically enumerated in the amendment, is definitely prescribed to two thirds of the amount by which its outstanding indebtedness was decreased during the prior biennium or fiscal year. Hallyburton v. Board of Education, 213 N. C. 9, 195 S. E. 21 (1938).

The provisions of this section now constitute the dominant or controlling limitation upon the power of local units to contract debts or to issue bonds, and its provisions are superimposed upon the limitations contained in Art. 7, § 7, and in Art. 5, § 6, of the Constitution. Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910 (1946).

Bonds are outstanding within the meaning of this section until actually paid and canceled, or delivered to the county for cancellation. Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910 (1946).

Thus, where county bonds were payable at a certain banking institution on the first day of a county fiscal year, and before the close of the next preceding fiscal year the county made available funds for payment thereof, the bonds were outstanding at the close of the latter year within the meaning of this section. Coe v. Surry County, 226 N. C. 125, 36 S. E. (2d) 910 (1946).

Refunding Bonds. — Defendant county proposed to issue bonds to refund bonds of several of its townships, which bonds constituted a valid existing debt of the county, the county having received the benefit of the proceeds of the bonds and having agreed to assume the indebtedness prior to the adoption of the amendment to this section. Plaintiff contended that the county bonds could not be issued without a vote by mandate of this section as amended. It was held that the proposed county bond issue was to refund a valid existing debt of the county within the meaning of this section, as amended, and under the exception therein provided a vote is unnecessary, nor could the means for the repayment of the bonds be adversely affected by any constitutional change. Thompson v. Harnett County, 212 N. C. 214, 193 S. E. 158 (1937).

During the prior fiscal year defendant county began refunding operations, and during that year issued its refunding bonds, but did not retire the bonds refunded until the first day of the present fiscal year. Plaintiff contended that since both the refunding bonds and the bonds refunded were outstanding during the prior fiscal year, there had been an increase rather than a decrease in the county's outstanding indebtedness during the prior fiscal year. It was held that the failure of the county to complete its refunding operations during the prior fiscal years is immaterial, and the refunding bonds should not be included in determining the amount by which the county had reduced its outstanding indebtedness during the prior fiscal year within the meaning of the constitutional limitation on an increase of debt by counties and municipalities. Royal v. Sampson County, 214 N. C. 259, 199 S. E. 15 (1938).

Bonds in excess of two thirds of amount by which taxing unit decreased its outstanding debt during prior fiscal year may be issued upon the approval of a majority of those voting under this section. Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

When a proposed bond issue is in excess of two thirds of the amount by which the issuing county reduced its outstanding indebtedness during the prior fiscal year, the question must be submitted to a vote and issuance approved by a majority of the voters who shall vote thereon regardless of the purpose of the bonds, unless the purpose is within the specific exceptions enumerated in this section. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

In determining the amount of debt contracted in any fiscal year within the provision of this section, limiting the power of a taxing unit to contract debts to two thirds the amount by which the taxing unit's outstanding debt was decreased dur-

ing the prior fiscal year, the total amount of bonds issued during the fiscal year, by the taxing unit, whether with or without the approval of its voters, should be included, except bonds issued by it to fund or refund a valid existing debt, to supply a casual deficit, to suppress riots or insurrections, or to repel invasions, and except tax anticipation notes issued in an amount not exceeding fifty per centum of the taxes for the fiscal year. Hallyburton v. Board of Education, 213 N. C. 9, 195 S. E. 21 (1938).

Bonds for Purpose Other than Necessary Expense. — A proposed bond issue which is not only in excess of the amount by which the county reduced its outstanding indebtedness during the prior fiscal year, but also for a purpose other than a necessary expense, must be approved not only by the majority of voters voting in the election under the provisions of this section, but also by a majority of the qualified voters of the county under the provisions of Art. VII, § 7, there being no conflict between the constitutional provisions, and both being applicable. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

Bonds for Streets and Sewage.—A municipality may not issue bonds for street and sewage construction or extension without a vote when, during the fiscal year, such city has issued bonds with the approval of the voters in excess of the amount by which it had reduced its outstanding indebtedness during the prior fiscal year, the purpose of the amendment being to limit the existing power of the governing authorities to issue bonds for necessary expenses so that the net indebtedness of the taxing unit should not be increased beyond the limits prescribed in the amendment, except with the approval of its voters. Gill v. Charlotte, 213 N. C. 160, 195 S. E. 368 (1938).

Bonds for Municipal Power Plant.—A contract of a municipality to construct a municipal electric power plant and to issue its bonds to pay for same, with provision that principal and interest of the bonds should be paid exclusively from the profits from the plant without resort to funds raised by taxation, does not create a "debt" of the municipality within the meaning of this section as amended, which prohibits the contraction of a debt by a municipality in any fiscal year in excess of two thirds of the amount by which its debt was decreased during the prior fiscal year. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938). See also, McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Year Debt Contracted. — The debt is contracted during the fiscal year following that in which the debt was reduced, even though the certificate of the secretary of the local government commission required by § 159-18 was not executed within that time. Board of Education v. State Board of Education, 217 N. C. 90, 6 S. E. (2d) 833 (1940).

Issuing Bonds to Aid War Veterans.— A statute for the purpose of issuing bonds, passed by the legislature and which has been approved by the vote of the people of the State at an election duly had for the purpose, providing for an issuance and sale of State bonds for the purpose of lending the proceeds on mortgage to a certain amount of the value of the land to the veterans of the World War to help them in providing homes for themselves, is the pledging of the credit of the State for a public purpose, and is a valid exercise of statutory authority. Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927).

Section Does Not Apply to School System.—This section is an inhibition on giving or lending the credit of the State to third persons, individual or corporate, and of the kind contemplated in the provision; and cannot be construed to affect the mandatory provisions of Art. IX as to the maintenance of a State-wide school system by legislative enactment. Lacy v. Fidelity Bank, 183 N. C. 373, 111 S. E. 612 (1922).

Vote of People Necessary to Aid New Railroad. — The General Assembly has no power to contract a debt, without a vote of the people, to aid in the construction of, or build a new railroad. University R. Co. v. Holden, 63 N. C. 410 (1869).

Same—Issuing Bonds to Pay for Stock. —A subscription for stock in a corporation and issuing bonds to pay for such stock, is a gift of the credit of the State, within the meaning of this section. Galloway v. Jenkins, 63 N. C. 147 (1869).

In an election for the issuance of county bonds for a new school building, a necessary expense, a favorable vote of the majority of those voting is sufficient to validate the bond resolution and authorize the issuance and sale of the proposed bonds. Mason v. Moore County Board of Com'rs, 229 N. C. 626, 51 S. E. (2d) 6 (1948).

When Counties May Subscribe to Railroad Stock. — This section could not be construed as limited in application to cases where railroads had been commenced and were unfinished at the time the constitution was adopted, and in which the counties, as such, had a direct pecuniary interest; but it conferred the power on coun-

ties to subscribe for stock, in the manner prescribed, in any railroad company which had been duly incorporated to build a projected road in which the citizens of the county, as a body, have a general interest because of the supposed benefits to be derived from it. Board v. Coler, 113 F. 705 (1902).

Test of Bonds Being at Par.—The test of bonds being at par is, whenever in the particular transaction the State receives in legal money the sum which she becomes liable to pay. Galloway v. Jenkins, 63 N. C. 147 (1869) (con. op.).

National Park Act.—The statute establishing the North Carolina National Park Commission (Laws 1927, c. 48) with the certain powers therein enumerated is for the benefit of the public of the State and not that of some third person, and does not fall within the provision of this section. Yarbrough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928).

Section Does Not Apply to Insuring School Property.—A county board of education has the authority to insure school property in a mutual fire insurance company authorized to do business in this State, and assume the contingent liability limited to the amount of the cash premium, and the execution of such policy does not lend the credit of the State to a private corporation under this section. Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733 (1935).

Cited in Northwestern North Carolina R. Co. v. Jenkins, 65 N. C. 173 (1871); Commissioners v. Snuggs, 121 N. C. 394, 28 S. E. 539 (1897); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Jefferson Standard Life Ins. Co. v. Guilford County, 225 N. C. 293, 34 S. E. (2d) 430 (1945).

§ 5. Property exempt from taxation.—Property belonging to the State or to municipal corporations, shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers, libraries, and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. The General Assembly may exempt from taxation not exceeding one thousand dollars ($1,000.00) in value of property held and used as the place of residence of the owner. (Const. 1868; 1872-73, c. 83; 1935, c. 444.)

Editor's Note.—This section, which was § 6 of the Constitution of 1868, was amended by the insertion of the phrase "or any other personal property," in pursuance of c. 83, Public Laws of 1872-73. The amendment, which added the last sentence of this section, was proposed by Public Laws 1935, c. 444, § 2, and adopted at the general election held in November 1936.

For article, "The Battle of Exemptions," see 19 N. C. Law Rev. 154.

The amendment of 1936 is only permissive in terms and not self-executing. The power of exemption, to the extent therein mentioned, is exercisable, in whole or in part, or not at all, as the General Assembly, in its wisdom, shall determine. Nash v. Board of Com'rs, 211 N. C. 301, 190 S. E. 475 (1937).

Legislative Exemptions Must Be Considered with This Section.—The provisions of the revenue act exempting property from taxation must be considered in connection with this section, since the General Assembly has no power to exempt property from taxation beyond the permissive power granted it by this section. Sir Walter Lodge, etc. v. Swain, 217 N. C. 632, 9 S. E. (2d) 365 (1940).

Municipal Bonds to Provide Schoolhouses and Equipment Are Exempt. — Bonds issued by a municipality to provide schoolhouses and equipment were for a public purpose, and since the bonds, although the property of a private corporation, were issued for a necessary public purpose and purchased in reliance upon the statutory provision exempting them from taxation, they stand upon the same footing as the school buildings erected with the proceeds of the bonds. Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936).

Section Applies Only to Ad Valorem Taxes.—Any intent or attempt, on the part of the legislature, to grant an exemption from any tax or assessment on real property, pursuant to the provisions of this section, other than for ad valorem taxes, would be without constitutional authorization. Raleigh Cemetery Ass'n v. Raleigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

And Does Not Grant Exemption from Special or Local Assessments.—Property belonging to municipal corporations is not exempt from assessment for local improvements. Raleigh Cemetery Ass'n v. Ral-

eigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

The general rule that exemption from taxation does not mean exemption from a special or local assessment, applies with respect to cemetery property. Raleigh Cemetery Ass'n v. Raleigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

Assessments on public school property for special benefits thereto, caused by the improvement of the street on which it abuts, are not embraced within the prohibition of this section exempting property belonging to the State or to municipal corporations from taxation. Raleigh v. Raleigh City Administrative Unit, 223 N. C. 316, 26 S. E. (2d) 591 (1943); Raleigh Cemetery Ass'n v. Raleigh, 235 N. C. 509, 70 S. E. (2d) 506 (1952).

Municipal property acquired by tax foreclosure and subsequently rented is liable for county taxes, since it is not used by the city for a governmental purpose, and therefore does not come within the constitutional provision for the exemption of property from taxation. Benson v. Johnston County, 209 N. C. 751, 185 S. E. 6 (1936). See also, in this connection, Board of Financial Control v. Henderson County, 208 N. C. 569, 181 S. E. 636, 101 A. L. R. 783 (1935).

Excise taxes on municipal property are not prohibited. Stedman v. Winston-Salem, 204 N. C. 203, 167 S. E. 813 (1933).

Property Exempted by Constitution.— Only one class of property is exempted from taxation by the Constitution itself, to-wit, "property belonging to the State or to municipal corporations." Charlotte Bldg., etc., Ass'n v. Commissioners, 115 N. C. 410, 20 S. E. 526 (1894)

The power to grant exemptions under authority of the second sentence in this section, which may be exercised in whole, or in part, or not at all, as the General Assembly shall elect, is limited to property held for one or more of the purposes therein designated. Rockingham County v. Elon College, 219 N. C. 342, 13 S. E. (2d) 618 (1941). See also, Guilford College v. Guilford County, 219 N. C. 347, 13 S. E. (2d) 622 (1941).

All property is subject to taxation unless exemption is authorized by the Constitution and laws of the State. Piedmont Memorial Hospital v. Guilford County, 221 N. C. 308, 20 S. E. (2d) 332 (1942).

The power of the legislature to exempt from taxation property not owned by the State or its political subdivisions is perforce limited and restricted by the scope of the constitutional grant of the permissive power of exemption. Rockingham County v. Elon College, 219 N. C. 342, 13 S. E. (2d) 618 (1941). See also, Guilford College v. Guilford County, 219 N. C. 347, 13 S. E. (2d) 622 (1941).

Business property owned by an educational institution and rented for offices and business purposes to private enterprises, the net profit derived therefrom being devoted exclusively to educational purposes, was not within the exemption granted by this section. Rockingham County v. Elon College, 219 N. C. 342, 13 S. E. (2d) 618 (1941). See also, Guilford College v. Guilford County, 219 N. C. 347, 13 S. E. (2d) 622 (1941).

Property owned by a church and rented by it for commercial purposes, and the rent used for religious purposes, is not exempt from taxation. Sparrow v. Beaufort County, 221 N. C. 222, 19 S. E. (2d) 861 (1942).

Statutes Exempting Specific Property Are Construed Strictly.—Statutes enacted by the General Assembly exempting specific property from taxation, because of the purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation. Salisbury Hospital v. Rowan County, 205 N. C. 8, 169 S. E. 805 (1933); Piedmont Memorial Hospital v. Guilford County, 218 N. C. 673, 12 S. E. (2d) 265 (1940); Harrison v. Guilford County, 218 N. C. 718, 12 S. E. (2d) 269 (1940).

Same—Corporation Composed of Stockholder Not a Municipal Corporation. — A municipal corporation is one designed to create within a prescribed territory a local government of the people therein, as a part of that exercised by the State, with certain and defined restrictions and this section, exempting municipal corporations from taxation, does not include within its meaning or intent a corporation composed of shareholders which in its form and controlling features is a business enterprise upon which municipal powers have been incidentally conferred in promotion of its primary purpose. Southern Assembly v. Palmer, 116 N. C. 75, 82 S. E. 18 (1895).

Same—Drainage Districts Are Not Municipal Corporations. — Drainage districts are not regarded as municipal corporation in purview of this section and a legislative act exempting their bonds from taxation violates the uniform rule as to taxation required by § 3 of this article. Drainage Comm. v. Webb & Co., 160 N. C. 594, 76 S. E. 552 (1912).

Same—Local Assessment for Paving Street.—Local assessments against lands

along the streets of a city for paving and improving the streets do not fall within the intent and meaning of this section. Tarboro v. Forbes, 185 N. C. 59, 116 S. E. 81 (1923).

Realty acquired for purposes of rural housing authority under §§ 157-1 to 157-39 is exempt from taxation under this section. Mallard v. Eastern Carolina Regional Housing Authority, 221 N. C. 334, 20 S. E. (2d) 281 (1942).

Interest of State in Business Enterprises Not Included.—The provision contained in this section exempting property belonging to the State from taxation, does not embrace the interest of the State in business enterprises, such as railroads and the like, but applies to the property of the State held for State purposes. Atlantic R. Co. v. Board, 75 N. C. 474 (1876). See also, Warrenton v. Warren County, 215 N. C. 342, 2 S. E. (2d) 463 (1939).

Section Permissive.—Under this section the legislature may exercise, to the full extent or in part, the power to exempt from taxation property held for educational, scientific, literary, charitable or religious purposes, or may decline to exempt at all. The constitutional provision being in the disjunctive. the legislature can exempt the property up to a certain value and tax all above it, and may also tax property held for one of the purposes named and exempt that held for others. United Brethren v. Commissioners, 115 N. C. 489, 20 S. E. 626 (1894). See also, Salisbury Hospital v. Rowan County, 205 N. C. 8, 169 S. E. 805 (1933).

It Is Self-Executing. — The provisions of this section that property belonging to or owned by the State or municipal corporations, shall be exempt from taxation, is self-executing and requires no legislation to make it effective. Salisbury Hospital v. Rowan County, 205 N. C 8, 169 S. E. 805 (1933). See also, Piedmont Memorial Hospital v. Guilford County, 218 N. C. 673, 12 S. E. (2d) 265 (1940); Raleigh Cemetery Ass'n v. Raleigh, 235 N C. 509, 70 S. E. (2d) 506 (1952).

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, 156 S. E. 855 (1931).

Exemption of Property Used for Religious, etc., Purposes Is Not Self-Executing. — The provision of this section that the General Assembly may exempt from taxation property held for educational, scientific, literary, charitable or religious purposes, is a grant of power and is not self-executing, and the power of the legislature to prescribe such exemptions is limited by the terms of the grant. Piedmont Memorial Hospital v. Guilford County, 218 N. C. 673, 12 S. E. (2d) 265 (1940).

Use to Which Property Is Devoted.—Under this section it is the use to which the property is devoted and to the extent of the interest so dedicated which should control, rather than the title or other tenure by which it is held, and its provisions are broad and comprehensive enough to uphold the legislative exemption as to all property used exclusively for educational purposes. Corporation Comm. v. Oxford Seminary Constr. Co., 160 N. C. 582, 76 S. E. 640 (1912).

A lot purchased by trustee of a church for the purpose of erecting a new church and Sunday school thereon adequate for the needs of the congregation, and, pending the accumulation of sufficient funds to build the new church, used exclusively for open air Sunday school and church meetings, is property held for religious purposes within the meaning of this section and the legislature has power to exempt such property from taxation. Harrison v. Guilford County, 218 N. C. 718, 12 S. E. (2d) 269 (1940).

The power granted the legislature to exempt property from taxation is limited by the language of this section to property held for educational, scientific, charitable or religious purposes, the purpose for which the property is held and not the character of the corporation or association holding the property being the basis for the grant of permissive power to exempt, and the legislature has no power to exempt property held by a religious or charitable corporation or organization for business or commercial purposes. Sir Walter Lodge, etc. v. Swain, 217 N. C. 632, 9 S. E. (2d) 365 (1940).

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 (1931).

Weight of Fact That Institution Has Not Been Paying.—The fact that an educational incorporation had gone for a long period of time without paying taxes unchallenged by both the legislative and executive department of the government is deserving of great weight by the court in construing this section. Corporation Comm. v. Oxford Seminary Constr. Co., 160 N. C. 582, 76 S. E. 640 (1912).

No Distinction Between Public and Private Institutions.—The provisions of this section make no distinction between public and private educational corporations, or between institutions which are in part conducted for the personal profit of the owner and those which are run on a salary basis, using any profits which may arise in the extension of the work. Corporation Comm. v. Oxford Seminary Constr. Co., 160 N. C. 582, 76 S. E. 640 (1912).

Cited in Redmond v. Commissioners, 106 N. C. 122, 10 S. E. 845 (1890) (dis. op.); Board v. Commissioners, 137 N. C. 310, 49 S. E. 353 (1904); Davis v. Salisbury, 161 N. C. 56, 76 S. E. 687 (1912); Wagstaff v. Central Highway Comm., 177 N. C. 354, 99 S. E. 1 (1919) (con. op.); Weaverville v. Hobbs, 212 N. C. 684, 194 S. E. 860 (1938); Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

§ 6. **Taxes levied for counties.**—The total of the State and county tax on property shall not exceed twenty cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property. (Const. 1868; Ex. Sess. 1920, c. 93; 1951, c. 142.)

Editor's Note.—Pursuant to c. 93, Public Laws of 1920, extra session, this section was substituted for the old § 6 (§ 7 of the Constitution of 1868), which was as follows: "The taxes levied by the commissioners of the several counties for county purposes, shall be levied in like manner with the State taxes, and shall never exceed the double of the State tax, except for a special purpose, and with the special approval of the General Assembly."

This section was amended by vote at the general election of November 4, 1952.

For article on property and poll tax limitations under this section and § 1 of this article, see 18 N. C. Law Rev. 275.

Proposed Amendment. — The amendment of this section proposed by Session Laws 1947, c. 421, failed of adoption at the general election held on November 2, 1948.

Ordinarily Expenses of Holding Courts and Maintaining Jails Are General Expenses. — Only under exceptional circumstances may the expenses of holding courts and maintaining the county jail and caring for jail prisoners be classified as expenses for special purposes, since ordinarily the holding of courts is a general expense recurring in the ordinary course of and as necessary steps in the operation of the county government, and the maintenance of the county jail and the caring for prisoners is a general expense, continuous and ever present, and a tax levy therefor in addition to the 15c. levy made for general county purposes in another item is invalid, and plaintiff is entitled to recover the amount paid under the additional levy in his suit therefor instituted in accordance with the statutory procedure. Southern Ry. Co. v. Cherokee County, 218 N. C. 169, 10 S. E. (2d) 607 (1940); Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

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 (1931).

Regularly Recurring Expenditures in Performance of Governmental Duty. — A purpose which involves a regularly recurring expenditure in the performance of a duty or the exercise of a power which is essential to government and which has been delegated to the county unit of government, is a general rather than a special purpose within the meaning of this provision. Southern R. Co. v. Mecklenburg

County, 231 N. C. 148, 56 S. E. (2d) 438 (1949).

What is a "special purpose" within the meaning of this section of the State Constitution is a matter for judicial rather than legislative determination, since such purpose for which an unlimited tax may be levied with the special approval of the General Assembly must also be a "necessary expense" of the county within the meaning of Art. VII, § 7, which involves both questions of law and fact. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

The last paragraph of § 153-152, authorizing a county to levy a tax to pay a public hospital for the care and hospitalization of the indigent sick of the county under a contract with a hospital does not violate this section since the tax contemplated is for a special, necessary purpose, with special approval of the General Assembly. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

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'rs, 201 N. C. 233, 159 S. E. 439 (1931); Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

And a county may levy taxes for necessary expenses in excess of the limitation fixed in this section, without a vote when the levy is also for a special purpose with the special approval of the legislature. Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

The limitation of Art. V, § 4, on the contraction of debts by counties and municipalities is in addition to the limitations prescribed by Art. VII, § 7, and this section, and such local units may not create debts and issue bonds without a vote of the people, even for necessary expenses within the limitation prescribed by this section without the approval of the legislature, or in excess of the limitation prescribed by this section with the special approval of the legislature, unless such bonds, together with such other bonds as may have been issued during the fiscal year, do not exceed two thirds of the amount by which such unit decreased its outstanding indebtedness during the prior fiscal year. Hallyburton v. Board of Education, 213 N. C. 9, 195 S. E. 21 (1938).

While ordinarily when a statute is constitutional in part and unconstitutional in part, only the unconstitutional provisions will be disregarded, when an item for the levy of taxes includes both general and special expenses, the entire item in excess of the constitutional limitation, must fail, or if an item combines both a special and an unnecessary expense, the item must fail in its entirety. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

Incidental Expenses.—Defendant county levied taxes up to the 15-cent limitation for general county purposes, and in addition thereto levied a tax for "upkeep of county buildings, courthouse, county home, poor and paupers, and incidental purposes." It was held that the court may not determine whether the "incidental expenses" are for a necessary or unnecessary purpose, or for a general or special purpose, or how much of the tax is for "incidental expenses," and therefore the entire item is void as not being for a special purpose with special approval of the legislature within the meaning of this section. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

Attorney's Fees. — Defendant county levied taxes up to the 15-cent limitation for general county purposes and in addition thereto levied taxes for the purposes of "commissioners' pay, expense and board, courthouse and grounds, and county attorney's fees." It was held that no special approval of the legislature being shown for county attorney's fees, the entire item must fail, and furthermore, the other purposes included in the item are for general county expenses and not for a special purpose within the meaning of this section. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

A tax to pay the county farm agent's salary is for a special purpose having the special approval of the legislature, within the meaning of Art. V, § 6, for which a tax in excess of the 15-cent limitation may be imposed. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

Supremacy of Legislative Power.—The constitutional power conferred on the legislature to authorize counties to levy a special tax upon the property and poll for special county purposes is essential to the existence of the State, and in the exercise of this power the legislature is supreme. Moose v. Board, 172 N. C. 419, 90 S. E. 441 (1916).

When Vote and Legislative Authority Necessary.—Cities and towns may levy a

tax for necessary expenses up to the constitutional limitation without a vote of the people and without legislative permission; for necessary expenses they may exceed the constitutional limitation by legislative authority, without the approval of the voters: but for purposes other than necessary, a tax cannot be levied either within or in excess of the constitutional limitation except with the approval of the voters under special legislative authority. Henderson v. Wilmington, 191 N. C. 269, 132 S. E. 25 (1926).

Levy Beyond Limitation Void.—A levy beyond the limitation is void. County Board v. Commissioners, 107 N. C. 110, 12 S. E. 190 (1890).

Levy Partly for Special and Partly for General Purposes. — Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is infra vires, the taxes collected beyond the requirements of the special purposes may be turned into the general fund and used for general purposes, but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires and no part of the levy can be collected. Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896).

Where Act Severable, Valid Part Effective.—An act that attempts to authorize a county to supplement to any extent its fund for general county expenses by special tax beyond the limitations by this section of the Constitution, is to that extent unconstitutional and void; but where the valid portion of the act is distinctly severable from the invalid part, and may alone be enforced by the methods prescribed, without being affected by the invalid part, the entire statute will not be declared invalid by the courts. Norfolk Southern R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924).

Giving County Commissioners Authority to Issue Bonds. — The authority conferred upon the board of county commissioners to build its roads and bridges in any way that may seem practicable, and issue bonds not to exceed the actual cost, and to levy sufficient tax on real and personal property to pay interest, and create a sinking fund, is not necessarily inconsistent with this section excepting from the limitation of 15 cents on the $100 valuation of property a levy on county property for "a special purpose, and with the approval of the General Assembly, which may be done by special or general act." Norfolk Southern R. Co. v. McArtan, 185 N. C. 201, 116 S. E. 731 (1923).

Special Approval for Necessary Expenditures.—This section, of the State Constitution, authorizes the legislature to give special approval of taxation by a county for necessary expenditures by either a special or general statute. Norfolk Southern R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924). As to necessary expenses see note to Art. VII, § 7.

Tax for Road Purposes. — Authority may be given by the legislature to a county to levy a special tax for road purposes upon the approval of its electors lawfully ascertained, to exceed the general tax limitation, by special or general acts. State v. Kelly, 186 N. C. 365, 119 S. E. 755 (1923).

An act authorizing counties to issue bonds for the purpose of laying out and operating, altering and improving the public roads of the county, etc., is for a special purpose within the intent and meaning of this section. Parvin v. Board, 177 N. C. 508, 99 S. E. 432 (1919).

Details Unnecessary.—An act giving the special approval of the legislature to county taxation for special purposes need not specify the sum to be raised by such taxation, nor a limit beyond which it cannot be carried; details are not proper in such statutes—these should be left to the commissioners. Brodnax v. Groom, 64 N. C. 244 (1870).

A tax levied by the county commissioners for the aged and infirm, to pay jurors, for feeding and caring for the county prisoners are expenses to be paid from the general county fund as current expenses, and fall within the limitations of this section. Southern Ry. Co. v. Cherokee County, 195 N. C. 756, 143 S. E. 467 (1928).

Under this section Cumberland County is authorized by the Act of 1923 to levy annually five cents only on the one hundred dollar valuation, for maintaining county homes for the aged and infirm and for similar purposes. Atlantic Coast Line R. Co. v. Cumberland County, 223 N. C. 750, 28 S. E. (2d) 238 (1943).

Upkeep of county buildings and upkeep and maintenance of county home for the aged and infirm are general expenses and must be covered in the fifteen-cent levy limited for general purposes. Atlantic Coast Line R. Co. v. Duplin County, 226 N. C. 719, 40 S. E. (2d) 371 (1946).

Levy for Public Welfare.—The board of county commissioners of Beaufort County having levied, in the year 1942, a tax rate of fifteen cents on the one hundred dollars property valuation for general purposes,

the limit fixed by this section, the levy for public welfare or poor relief was limited to a rate of five cents on the one hundred dollars property valuation, and any levy for public welfare or poor relief, in excess thereof, was held invalid. Atlantic Coast Line R. Co. v. Beaufort County, 224 N. C. 115, 29 S. E. (2d) 201 (1944).

Statutory Validation of Excessive Levy. — Where a county has levied a tax for general purposes in excess of that permitted by our Constitution, Art. V, § 6, which a property owner has paid under protest, and has reserved his right under the provisions of § 105-406, it may not be validated by an act passed after the assessment had been passed upon or levied under the former statute. Southern Ry. Co. v. Cherokee County, 195 N. C. 756, 143 S. E. 467 (1928).

Correction of Minutes of Levy. — The board of commissioners of a county may correct the minutes of a levy of taxes formerly made by it to show separately the items relating to current county expenses and the items of levy for unauthorized special purposes when no change in the former levies are thereby made. Southern Ry. Co. v. Cherokee County, 195 N. C. 756, 143 S. E. 467 (1928).

Public-Local Laws 1927, c. 201, applicable to Cherokee County, cannot validate a void levy. Southern Ry. Co. v. Cherokee County, 194 N. C. 781, 140 S. E. 748 (1927). It may be that the General Assembly could pass a special act or general law allowing a levy for special purposes of this kind in emergency cases. Southern Ry. Co. v. Cherokee County, 195 N. C. 756, 143 S. E. 467 (1928).

Expenditures for maintenance of a rural police force is for a continuing expense in furtherance of an indispensable function of county government, and therefore is for a general county purpose within the meaning of the constitutional limitation on the tax rate for such purposes. Southern R. Co. v. Mecklenburg County, 231 N. C. 148, 56 S. E. (2d) 438 (1949).

Bonds for Erection of Jail.—Where the erection of a new jail was a public necessity, bonds necessary to provide funds for the erection or for a special necessary county expense under §§ 153-9, 153-49, and the taxes necessary to pay principal and interest of such bond issue are not subject to limitation on the tax rate. Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3 (1935).

Bonds Issued to Refund Other Bonds.—Where the municipal finance act does not apply to refunding certain bonds of a county, issued prior to its operating effect, and the bonds become due and payable, and there is no provision made for their payment, the act of the board of county commissioners in paying them out of the general county fund as a temporary arrangement, using the bonds as collateral to secure the repayment by refunding bonds to be authorized by the legislature: Held, the bonds later authorized by the legislature and issued by the county to refund the indebtedness to the general county fund are for a special purpose and do not fall within the general limitation of fifteen cents on the one hundred dollars valuation prescribed by the Constitution. Barbour v. Wake County, 197 N. C. 314, 148 S. E. 470 (1929).

Under c. 342, Public-Local Laws 1935, defendant county proposed to issue county bonds to refinance bonds issued by the townships of the county. The proceeds of the township bonds were used in the construction of highways which were later taken over by the county and thereafter by the State. The proposed county bond issue is for a county purpose within the meaning of this section. Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936).

A county has authority to issue funding and refunding bonds with the approval of the local government commission to take up valid, outstanding indebtednesses of the county which were incurred for necessary county expenses. Brooks v. Avery County, 206 N. C. 840, 175 S. E. 199 (1934). See Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936).

Cited in Cromartie v. Commissioners, 85 N. C. 211 (1881); Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889); Redmond v. Commissioners, 106 N. C. 122, 10 S. E. 845 (1890); Board v. Board, 111 N. C. 578, 16 S. E. 621 (1892); Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898); Jones v. Commissioners, 135 N. C. 218, 47 S. E. 753 (1904); Board v. Commissioners, 137 N. C. 310, 49 S. E. 353 (1904); Director-General v. Commissioners, 178 N. C. 449, 101 S. E. 91 (1919); Board v. Assell, 194 N. C. 412, 140 S. E. 34 (1927); Castevens v. Stanly County, 211 N. C. 642, 191 S. E. 739 (1937); Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937); Gill v. Charlotte, 213 N. C. 160, 195 S. E. 368 (1938); Board of Education v. Wilson, 215 N. C. 216, 1 S. E. (2d) 544 (1939).

§ 7. Acts levying taxes shall state objects, etc.—Every act of the Gen-

eral Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose. (Const. 1868.)

Section Does Not Apply to Counties or Towns. — The provisions of this section do not extend to taxes levied by counties or incorporated cities or towns for general municipal purposes. Cabe v. Board, 185 N. C. 158, 116 S. E. 419 (1923).

This section has no application to taxes levied by the county authorities for county purposes. Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889).

Act Providing for Levy to Pay County Bonds.—Where an act authorizes the levy and collection of a special tax for the payment of certain county bonds; and a later act directed that the special tax collected under the first act should be turned into the general county fund, the first act is in conflict with this section which provides that every act of the General Assembly levying a tax shall state the special object to which it is to be applied. McCless v. Meekins, 117 N. C. 34, 23 S. E. 99 (1895).

Statute Authorizing County to Impose Tax. — Where the statute authorizes a county to impose a tax for necessary expenses, it is a delegation of the power to be exercised by the county as an agency for the State for the convenience of local administration, and the statute is not void in failing to state the special object to which it is to be applied, nor is the tax itself invalid if this constitutional requirement has been observed by the county authority in the imposition of the special tax. Norfolk Southern R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924).

Cited in University R. Co. v. Holden, 63 N. C. 410 (1869); Kyle v. Commissioners, 75 N. C. 445 (1876); Board of Education v. Wilson, 215 N. C. 216, 1 S. E. (2d) 544 (1939).

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, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. (Const. 1868; Convention 1875; 1899, c. 218; 1900, c. 2; 1945, c. 634, s. 2.)

Cross References.—See annotations under § 2. For statutory provisions regarding elections and the qualifications of voters therein, see §§ 163-1 et seq.

Editor's Note. — Article VI was redrafted and submitted to a popular vote, August 2, 1900, to become effective July 1, 1902. Chapter 318, Public Laws of 1899; c. 2, Public Laws of 1900.

Section 1 of this article originally was as follows: "Every male person born in the United States, and every male person who has been naturalized, twenty-one years old, or upward, who shall have resided in this State twelve months next preceding the election, and thirty days in the county in which he offers to vote shall be deemed an elector." The Convention of 1875 changed "thirty" to "ninety" and added the sentence: "But no person who, upon conviction or confession in open court, shall be adjudged guilty of a felony, or any other crime infamous by the laws of this State, and hereafter committed shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a manner prescribed by law."

This section was last amended by vote at the election held pursuant to Session Laws 1945, c. 634. The amendment deleted the word "male" formerly appearing before the word "person".

Cited in Chester, etc., R. Co. v. Commissioners, 72 N. C. 486 (1875); Foard v. Hall, 111 N. C. 369, 16 S. E. 420 (1892); Quinn v. Lattimore, 120 N. C. 426, 26 S. E. 638 (1897); Gill v. Board of Com'rs, 160 N. C. 176, 76 S. E. 203, 43 L. R. A. (N. S.) 293 (1912); State v. Knight, 169 N. C. 333, 85 S. E. 418, L. R. A. 1915F, 898, Ann. Cas. 1917D, 517 (1915) (right of women to vote); Harris v. Watson, 201 N. C. 661, 161 S. E. 215, 79 A. L. R. 441 (1931); Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

§ 2. Qualifications of voters.—He shall reside 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: 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's Prison, shall be permitted to vote, unless the said person shall be first restored to citizenship in the manner prescribed by law. (Convention 1875; 1899, c. 218; 1900, c. 2, s. 2; Ex. Sess. 1920, c. 93.)

Proposed Amendment.—Session Laws 1953, c. 972 proposed that the first sentence of this section be rewritten so as to read as follows: "Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal."

Editor's Note.—This section was added pursuant to c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900. The first sentence read: "He shall have resided in the State of North Carolina for two years, in the county six months, and in the precinct, ward or other election district in which he offers to vote, four months next preceding the election." This sentence was changed to read as at present, pursuant to c. 93, Public Laws of 1920, extra session.

Qualifications Same for Municipal Election.—The qualifications of voters in a municipal election is the same as in a general one. State v. Carter, 194 N. C. 293, 139 S. E. 604 (1927).

Cities and towns, like counties and townships, are parts and parcels of the State, organized for the convenience of local self-government; and the qualifications of voters are the same, to-wit, citizenship, twenty-one years of age, twelve months (now two years) residence in the State and thirty days (now four months) in the city or town. People v. Canaday, 73 N. C. 198 (1875).

A provision in the charter of a municipality limiting the right of suffrage in municipal elections to owners of real property within the town is unconstitutional. Smith v. Carolina Beach, 206 N. C. 834, 175 S. E. 313 (1934).

"Residence" Defined. — Residence, as used in this section defining political rights, is synonymous with domicile, denoting a permanent dwelling place, to which the party, when absent, intends to return. State v. Grizzard, 89 N. C. 115 (1883); State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

A person, in order to become a qualified elector in this State, must have come into the State a year (now two years) before the election, or have been domiciled within it for twelve months after forming the purpose to remain, and the same intent must be concurrent with the actual occupation of a domicile in the county in order to entitle him to the rights of an elector within its limits. Boyer v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

In order to acquire a residence for the purpose of exercising the right to vote in a given locality, the "residence" must be of a permanent, and not of a temporary character, corresponding with the word domicile. State v. Carter, 195 N. C. 697, 143 S. E. 513 (1928).

This constitutional provision applies primarily to an incoming person who is not permitted to exercise political rights until after he has been in the State and the voting precinct for the prescribed periods. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Are Not to a Citizen Temporarily Absent.—This constitutional provision is not designed to disfranchise a citizen of the State when he leaves his home and goes into another state or into another county of this State for temporary purposes with the intention of retaining his home and of returning to it when the objects which call him away are attained. State v. Chaplin, 228 N. C. 705, 47 S. E. (2d) 12 (1948).

Protracted Residence Abroad. — A protracted residence abroad of one engaged in business and with no home in this State, is not consistent with the idea of a residence here. State v. Grizzard, 89 N. C. 115 (1883).

Conviction of Crime. — In a contested election case, a conviction of an offense under a local law prescribing punishment in the State's Prison, renders void the vote of the one so convicted, whether the indictment charged or failed to charge that the alleged offense was "feloniously" com-

mitted. State v. Jackson, 183 N. C. 695, 110 S. E. 593 (1922).

Vote of Escaped Prisoner.—If a person in jail for misdemeanor (not infamous), and sentenced to imprisonment, escapes, and, before he is recaptured, his term or sentence expires, and he votes in his own precinct, in which he resided before he was sentenced, such vote is valid if the voter be otherwise qualified; but, if the voter is a fugitive from justice, and hiding from one part of the county to another, and voted in the precinct he happened to be in, and not in the precinct ot his residence when sentenced, such vote is illegal. Boyer v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

Where Voter Resides Near Precinct Line.—When a voter resides on or so near the precinct line, or the line be so uncertain that it is doubtful in which precinct the voter lives, and the voter, honestly and in good faith, bona fide, registers and votes in the precinct he, in good faith, alleges and believes he lives in, and has good reason to believe he is correct, and registers and votes in no other precinct, such vote is legal. Boyer v. Teague, 106 N. C. 576, 11 S. E. 665 (1890).

Mere Failure to Administer Oath.—The mere failure of the registrars to administer the oath to the electors, and allowing them to vote where not challenged, will not affect the result of the election held for the establishment of a special road district under valid legislative authority, when the electors so voting are qualified. Woodall v. Highway Commission, 176 N. C. 377, 97 S. E. 226 (1918).

Oath Does Not Embrace All Qualifications.—The oath prescribed for electors by § 163-29, omits some of the essential requisites to voting contained in the Constitution, and is confined to those indispensable qualifications set out in this section. The oath does not extend to disqualification incident upon conviction for crime. State v. Houston, 103 N. C. 383, 9 S. E. 699 (1889).

Same—Increasing Length of Residence. — The General Assembly cannot in any way change the qualifications of voters in State, county, township, city or town elections; an act which requires a longer residence in the county than this section requires, is unconstitutional. People v. Canaday, 73 N. C. 198 (1875).

A provision in a town charter permitting nonresident freeholders to vote in all municipal elections is void because in conflict with this section. However, an election held under this provision is not void if it is shown that no persons not qualified under the Constitution actually participated in the election. Wrenn v. Kure Beach, 235 N. C. 292, 69 S. E. (2d) 492 (1952).

Provision That Commissioners Come from Different Parties.—A provision in a statute that township highway commissioners shall be selected for their fitness, and not for political faith, and to remove the position from partisan politics, one each of the two members to be elected shall, "so far as feasible and practicable, come from each of the two leading political parties of the township," is too indefinite and uncertain to affix a qualification to the position, being recommendatory only to the voters, whose action is not reviewable by the courts. State v. Sanders, 174 N. C. 112, 93 S. E. 476 (1917).

Cited in Quinn v. Lattimore, 120 N. C. 426, 2 S. E. 638 (1897); Cox v. Com'rs of Pitt County, 146 N. C. 584, 60 S. E. 516, 16 L. R. A. (N. S.) 253 (1908); State v. Windley, 178 N. C. 670, 100 S. E. 116 (1919); Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

§ 3. **Voters to be registered.**—Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article. (Const. 1868; 1899, c. 218; 1900, c. 2, s. 3.)

Cross Reference. — For statutory provision as to registration, see §§ 163-28 et seq.

Editor's Note.—Section 2 of the Constitution of 1868 was as follows: "It shall be the duty of the General Assembly to provide from time to time, for the registration of all electors, and no person shall be allowed to vote without registration, or to register, without first taking an oath or affirmation to support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith." This was amended to read as the present § 3 pursuant to c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900. For the present registration laws, see §§ 163-29 to 163-52.

Power of General Assembly. — While the General Assembly cannot add to the

qualifications prescribed by the Constitution for voters, it has the power, and, it is the duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. State v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Act Requiring New Registration. — An act authorizing a bond issue by a county is not objectionable as violating this section, upon the ground that it empowered the county commissioners to order a new registration. Cox v. Commissioners, 146 N. C. 584, 60 S. E. 516 (1908).

Act Requiring Proof of Ability to Read and Write Is Valid.—The provisions of § 163-28 providing that a person presenting himself for registration shall, before he is registered, prove to the satisfaction of the registrar his ability to read and write any section of the Constitution, was held valid, since the authority was granted the legislature by this section to enact general legislation to carry out the provisions of this article. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

§ **4. Qualification for registration.**—Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article (Const. 1868; 1899, c. 218; 1900, c. 2, s. 4; Ex. Sess. 1920, c. 93.)

Editor's Note.—This section was added in pursuance of c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900. The following changes were made pursuant to c. 93, Public Laws of 1920, to make the section read as at present: the clause "and before he shall be entitled to vote, he shall have paid on or before the first of May, of the year in which he proposes to vote, his poll tax for the previous year as prescribed by Article V, Section 1, of the Constitution," immediately following the word "language," was stricken out; the proviso, "Provided, such person shall have paid his poll tax as above required," was stricken from the end of the section.

The language of this section is mandatory. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

Registration Essential.—Registration is essential to the exercise by a citizen, possessed of the other legal qualifications, of his right to vote, and, when duly made, is prima facie evidence of the right. State v. Waldrop, 104 N. C. 453, 10 S. E. 694 (1889).

Same—Act of Public Officer.—The registration of an elector, who is qualified to vote, must be accepted as the act of a public officer, and entitles the elector to cast his vote. State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Registrar Is Logical Person to Carry Out Requirements of Section. — As this section of the Constitution says "presenting himself for registration," someone has to determine whether or not the person shall be able to read and write any section of the Constitution in the English language. Section 163-28, putting this duty on the registrar is unquestionably a reasonable provision, and the registrar is the logical person to carry out the provisions of the Constitution. Allison v. Sharp, 209 N. C. 477, 184 S. E. 27 (1936).

What Registrars May Ask.—Registrars may ask the elector his age and residence, the township or county from whence he removed, in case of such removal since the last election, and whether he has resided in the State two years, and in the county in which he proposes to vote four months, preceding the election. If, in reply to such questions, the elector answers that he is twenty-one years old, and has resided in the State two years and in the county four months preceding the election, it is the duty of the registrars, upon his taking the prescribed oath, to record his name as a voter; but bystanders may re-

quire him to be sworn as to his residence. In re Reid, 119 N. C. 641, 26 S. E. 337 (1896).

As to the oath, see State v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889).

Permanent Roll Does Not Dispense with Further Registration.—The fact that a voter is registered on the permanent roll as provided by the Constitution does not dispense with the necessity of his registering anew in order to become a qualified voter, whenever required by the statutes regulating the registration of voters. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

Purpose of Permanent Roll.—The making of a permanent roll of record was intended to be done for the sole purpose of furnishing convenient and easily available evidence of the fact that those whose names appear thereon are not required to have the educational qualification. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

Registration Book Lost. — Where the registration book of an election precinct had been lost, and could not be replaced, but the registrar procured a new book, in which he entered the names of such persons as he knew had theretofore been registered, and also the names of those who applied for registration subsequently and it appeared that, at the election following, no one voted whose name did not appear on the registration book, that no one voted who was not entitled to vote, and no one who was entitled to vote was excluded the election was valid. State v. Waldrop, 104 N. C. 453, 10 S. E. 694 (1889).

When No Registration at All. — Where there has been no registration at all, the votes cast cannot be counted by proving that none but duly qualified electors voted; possibly this principle might be relaxed where a fraudulent conspiracy to deprive the voters of the right of suffrage is shown; and it does not apply where the legislature has failed to provide means for registration. State v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

When Prevented from Registering by Registrars.—Where a voter offers to comply with the laws in reference to registration, but is prevented by the wrongful conduct of the registrar, his vote should be received and counted, but a vote cast upon an invalid registration should be rejected. State v. Scarborough, 110 N. C. 232, 14 S. E. 737 (1892).

Necessity of Having Paid Taxes. — Where the validity of a special tax depends upon whether certain persons who had voted had paid their taxes for the previous year according to the requirements of this section the constitutional requirements must be met in order that they may exercise the privilege of voting, though they are permitted to wait until May 1st to pay them, if they so choose. Ingram v. Johnson, 172 N. C. 676, 90 S. E. 805 (1916).

Cited in State v. Grizzard, 89 N. C. 115 (1883); Pace v. Raleigh, 140 N. C. 65, 52 S. E. 277 (1905); Collie v. Franklin County Com'rs, 145 N. C. 170, 59 S. E. 44 (1907); Cox v. Com'rs of Pitt County, 146 N. C. 584, 60 S. E. 516, 16 L. R. A. (N. S.) 253 (1908).

§ 5. Indivisible plan; legislative intent. — That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together. (1900, c. 2, s. 5.)

§ 6. Elections by people and General Assembly.—All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. (Const. 1868; 1899, c. 218.)

How Elector May Vote. — The provisions of this section give the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar, or one of the judges of election, deposit it for him. Jenkins v. State Board, 180 N. C. 169, 104 S. E. 346 (1920).

Secret Ballot. — The provisions of this section imply that in elections by the people the ballot shall be a secret one. Withers v. Commissioners of Harnett, 196 N. C. 535, 146 S. E. 225 (1929).

It is not necessary to show undue influence or intimidation for the courts to declare an election void when the voters have been deprived of their right to a secret ballot. Withers v. Commissioners of Harnett, 196 N. C. 535, 146 S. E. 225 (1929).

A voter at an election does not waive his constitutional right to a secret ballot by

not protesting, unless he has been made aware of his rights under the facts and circumstances of the balloting. Withers v. Commissioners of Harnett, 196 N. C. 535, 146 S. E. 225 (1929).

§ 7. **Eligibility to office; official oath.** — Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, 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." (Const. 1868; 1899, c. 218; 1900, c. 2, s. 7.)

Editor's Note.—Section 4 of the Constitution of 1868 amended to become the present § 7 pursuant to c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900, was as follows: "Every voter, except as hereinafter provided, shall be eligible to office; but before entering upon the discharge of the duties of his 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. So help me, God.'"

Legislature Cannot Increase Qualifications.—This section provides "every voter in North Carolina, except in this article disqualified, shall be eligible to office," and the legislature cannot add to the constitutional disqualifications to hold office by requiring candidates for the position of recorder in a municipal court to be "a licensed attorney at law." State v. Bateman, 162 N. C. 588, 77 S. E. 768 (1913).

Women as Public Officers.—A woman is qualified to act as a notary public since the adoption of the 19th Amendment to the Constitution of the United States, and also to pass upon the proper probate of a deed to lands, and make a valid certificate for its registration, when thereto deputized by the clerk of the superior court under the provisions of our statute. Preston v. Roberts, 183 N. C. 62, 110 S. E. 586 (1922). For the former rule, see State v. Knight, 169 N. C. 333, 85 S. E. 418 (1915).

Cited in Harris v. Watson, 201 N. C. 661, 161 S. E. 215, 79 A. L. R. 441 (1931).

§ 8. **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. (Const. 1868; 1899, c. 218; 1900, c. 2, s. 8.)

Editor's Note.—The last sentence of this section, which was § 5 of the Constitution of 1868, was as follows: "Second, all persons who shall have been convicted of treason, perjury, or of any other infamous crime, since becoming citizens of the United States, or of corruption, or malpractice in office, unless such person shall have been legally restored to the rights of citizenship." The section was amended to read as the present § 8 pursuant to c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900.

Disqualification Not Part of Judgment. — The disqualification for office and the loss of the right of suffrage imposed by this section upon persons convicted of infamous offenses constitute no part of the judgment of the court, but are mere consequences of such judgment. State v. Jones, 82 N. C. 685 (1880).

Removal of Prosecuting Attorney. — A prosecuting attorney is removable from office as a matter of law or legal inference upon findings of his wilful misconduct or maladministration in office, supported by evidence. State v. Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Same—Appeal. — An appeal from the judgment of the superior court judge that a prosecuting attorney be removed for "wilful misconduct or maladministration in office," etc., is upon questions of law and legal inference, if justified by the findings of facts supported by evidence. State v.

Hamme, 180 N. C. 684, 104 S. E. 174 (1920).

Cited in Bank v. Redwine, 171 N. C. 559, 88 S. E. 878 (1916) (dis. op.); State v. Windley, 178 N. C. 670, 100 S. E. 116 (1919).

§ 9. **When this chapter operative.**—That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment. (1899, c. 218; 1900, c. 2, s. 9.)

Editor's Note.—This section was added pursuant to c. 218, Public Laws of 1899 and c. 2, Public Laws of 1900.

ARTICLE VII

Municipal Corporations

§ 1. **County officers.**—In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, the following officers: A treasurer, register of deeds, surveyor, and five commissioners. (Const. 1868.)

Cross References.—As to municipal corporations generally, see §§ 160-1 et seq.; as to the register of deeds, see §§ 161-1 et seq.; as to the county surveyor, see §§ 154-1 et seq.; as to the county commission, see §§ 153-1 et seq.

County Commissioners. — Chapter 526, Public-Local Laws of 1935, providing that Cherokee County should be divided into three districts and that one county commissioner should be nominated and elected by the qualified voters of each of the districts, is constitutional as a valid exercise of legislative power over municipal corporations, the General Assembly being given express power by Art. VII, § 14, to change and modify the provisions of this section, relating to number and election of county commissioners. Watkins v. Johnson, 210 N. C. 449, 187 S. E. 584 (1936).

Registers of Deeds.—The constitutional provision for the election of registers of deeds for a term of two years is subject to modification by statute, and therefore the legislature has the power to make the office appointive rather than elective, to extend the term, or to abolish it altogether, and even to dispossess the incumbent, since public office is not a property right. Penny v. Salmon, 217 N. C. 276, 7 S. E. (2d) 559 (1940).

Applied in Rhodes v. Lewis, 80 N. C. 136 (1879).

Stated in Harris v. Watson, 201 N. C. 661, 161 S. E. 215, 79 A. L. R. 441 (1931).

Cited in People v. McKee, 65 N. C. 257 (1871); People v. Canaday, 73 N. C. 198 (1875); Perry v. Franklin County Com'rs, 148 N. C. 521, 62 S. E. 608 (1908); Southern R. Co. v. Mecklenburg County, 231 N. C. 148, 56 S. E. (2d) 438 (1949).

§ 2. **Duty of county commissioners.**—It shall be the duty of the commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes, and finances of the county, as may be prescribed by law. The register of deeds shall be ex officio clerk of the board of commissioners. (Const. 1868.)

Cross Reference. — See §§ 153-1 et seq and notes thereto.

The General Assembly can give almost unlimited power to the counties to carry out this provision. Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936).

Fiscal Powers Are Subject to Modification.—The General Assembly has power to appoint a tax collector or manager for a county of the State, the fiscal powers granted the county commissioners by this section being subject to modification or abrogation by statute by express provision of Art. VII, § 13. Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

Supervision and Control of Roads.—Under this section the commissioners of a county have the duty to exercise a general supervision and control of the roads and levying of taxes as prescribed by law in reference to roads. Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936).

Authority to Borrow from General County Fund.—The board of county commissioners, having the supervision and control of roads, bridges, and the levying of taxes and the finances of the county, have the authority by proper resolution to borrow from the general county fund moneys with which to pay maturing bonds

of the county when due, being necessary to preserve the credit of the county, and to issue refunding bonds for the purpose of repaying this loan under a valid statute providing therefor and declaring itself to be a special statute validating and legalizing the transaction. Barbour v. Wake County, 197 N. C. 314, 148 S. E. 470 (1929).

How School Fund Disbursed.—This section gives the "supervision of schools" to the county commissioners; they levy the school tax, and in their treasury is kept the school fund, and their treasurer disburses the fund, upon the order of the school committee. Lane v. Stanly, 65 N. C. 153 (1871). See note to § 153-9, par. 2.

When Commissioners Fail to Qualify.—If from any cause the newly elected commissioners of a county fail to qualify at the time prescribed by law, the old board, as de facto officers, have the power to qualify a county treasurer-elect and induct him into office; or upon his default in filing the required bond, they have the power to declare a vacancy and fill the same by appointment. State v. Jones, 80 N. C. 127 (1879).

General Assembly May Authorize Ferry.—This section does not deprive the General Assembly of the power to pass an act authorizing the establishment of a public ferry at a certain point. In re Spease Ferry, 138 N. C. 219, 50 S. E. 625 (1905).

As to the power of General Assembly to abrogate the provisions of the section, see § 14 of the article and annotations thereunder.

Cancellation of Official Bond. — In the absence of a statute specifically authorizing the board of commissioners of a county to cancel an official bond, which the board has taken, accepted and filed, in the performance of its official duty, the duty imposed by this section upon such board, with respect to the finances of the county, does not confer upon the board such power. State v. Inman, 203 N. C. 542, 166 S. E. 519 (1932).

Applied in Reen v. Farmer, 211 N. C. 249, 189 S. E. 882 (1937).

Cited in Flat Swamp, etc., Co. v. McAlister, 74 N. C. 159 (1876); Board v. Commissioners, 111 N. C. 578, 16 S. E. 621 (1892); Crocker v. Moore, 140 N. C. 429, 53 S. E. 229 (1906); Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908); Bunch v. Randolph County Com'rs, 159 N. C. 335, 74 S. E. 1048 (1912); Commissioners v. Road Com'rs, 165 N. C. 632, 81 S. E. 1001 (1914); Wilson v. Holding, 170 N. C. 352, 86 S. E. 1043 (1915); Holmes v. Bullock, 178 N. C. 376, 100 S. E. 530 (1919); Lenoir County v. Taylor, 190 N. C. 336, 130 S. E. 25 (1925); Day v. Commissioners, 191 N. C. 780, 133 S. E. 164 (1926); Dare County v. Mater, 235 N. C. 179, 69 S. E. (2d) 244 (1952).

§ 3. Counties to be divided into districts.—It shall be the duty of the commissioners first elected in each county to divide the same into convenient districts, to determine the boundaries and prescribe the name of the said districts, and report the same to the General Assembly before the first day of January, 1869. (Const. 1868.)

Alteration of Township after First Division.—The creation or alteration of townships in the several counties of the State, after the first division by the county commissioners under this section is left with the Legislature. Grady v. County Com'rs, 74 N. C. 101 (1876). See § 153-9, par. 2, and notes thereto.

Cited in Wilson v. Board, 74 N. C. 748 (1876); Wallace v. Board, 84 N. C. 164 (1881); Wittkowsky v. Board, 150 N. C. 90, 63 S. E. 275 (1908); Road Comm. v. Commissioners, 178 N. C. 61, 100 S. E. 122 (1919).

§ 4. Townships have corporate powers.—Upon the approval of the reports provided for in the foregoing section by the General Assembly, the said districts shall have corporate powers for the necessary purposes of local government, and shall be known as townships. (Const. 1868.)

Township Powers Must Be Conferred.—Townships are corporate bodies and have no corporate powers when not specially conferred by statute. Wittkowsky v Board, 150 N. C. 90, 63 S. E. 275 (1908). See notes to section 153-9, par. 33.

Municipality Subject to Legislative Control.—A municipality, such as a city, town or county, is subject to the control of the General Assembly even in respect to necessary expenses. Jones v. New Bern, 152 N. C. 64, 67 S. E. 173 (1910).

Township Trustees Not a Municipal Corporation.—The board of township trustees has no existence as a municipal corporation, and hence it cannot be a party to a suit. Wallace v. Board, 84 N. C. 164 (1881).

Townships Not Given Power of Taxation. — This section does not give town-

ships the power of taxation for school purposes either through their trustees or committees. Lane v. Stanly, 65 N. C. 153 (1871). See § 160-56 and notes thereto.

Cited in Mann v. Allen, 171 N. C. 219, 88 S. E. 235 (1916); Road Comm. v. Commissioners, 178 N. C. 61, 100 S. E. 122 (1919).

§ 5. **Officers of townships.** — In each township there shall be biennially elected, by the qualified voters thereof, a clerk and two justices of the peace, who shall constitute a board of trustees, and shall, under the supervision of the county commissioners, have control of the taxes and finances, roads and bridges of the township, as may be prescribed by law. The General Assembly may provide for the election of a larger number of justices of the peace in cities and towns, and in those townships in which cities and towns are situated. In every township there shall also be biennially elected a school committee, consisting of three persons, whose duty shall be prescribed by law. (Const. 1868.)

Cross References.—As to the election, powers and duties of the clerk generally, see §§ 2-1 et seq. As to the justices, see §§ 7-112 et seq.

Editor's Note.—The act of 1877, c. 141, passed in pursuance of Art. VII, § 13, amended this section so as to deprive the board of township trustees of its existence as a municipal corporation and to establish other means of electing and appointing justices of the peace. See Wallace v. Trustees, 84 N. C. 164 (1881).

Justice Elected. — This section requires that justices of the peace shall be elected by townships. Edenton v. Wool, 65 N. C. 379 (1871).

Same—Power Cannot Be Conferred. — An attempt to confer the power of a justice of the peace on the judge of a special court cannot avail, for this section requires justices of the peace to be elected by the several townships, and the legislature cannot change the mode of their appointment. Wilmington v. Davis, 63 N. C. 582 (1869).

All Justices Members of Board of Trustees.—Where an act of the General Assembly authorized the election, in townships containing cities and towns, of a larger number of justices than two, all such justices are members of the township board of trustees. Conoley v. Harris, 64 N. C. 662 (1870).

Trustees without Authority to Build Bridges.—Township trustees have no authority to contract for building bridges; when such a contract is entered into without the sanction and supervision of the county commissioners, it is a nullity. Paine v. Caldwell, 65 N. C. 488 (1871).

Legislature May Create Highway Commission.—The Legislature has the constitutional authority to create a highway commission for a county, and give it control over its bridges and highways, their maintenance and supervision, etc., or subdivide this agency into several parts over defined territory. Ellis v. Greene, 191 N. C. 761, 133 S. E. 395 (1926).

Cited in Wallace v. Board, 84 N. C. 164 (1881); Jones, etc., Co. v. Commissioners, 85 N. C. 278 (1881); Road Comm. v. Commissioners, 178 N. C. 61, 100 S. E. 122 (1919).

§ 6. **Trustees shall assess property.** — The township board of trustees shall assess the taxable property of their townships and make return to the county commissioners for revision, as may be prescribed by law. The clerk shall also be, ex-officio, treasurer of the township. (Const. 1868.)

Assessment by Mayor and Commissioners.—An assessment of the property subject to taxation by a municipal corporation, made by the mayor and commissioners of such corporation, is void. Such assessment, under the provision of the Constitution, must be made by the township board of trustees. Cobb v. Corporation, 75 N. C. 1 (1876).

When Appeal Lies from Commissioners' Decision. — The county commissioners have exclusive original jurisdiction to grant relief against excessive valuation of property for taxation; and from their decision, upon a petition for that purpose, there is no appeal, unless it appears from the facts found by them as to the valuation of property, that they have proceeded upon some erroneous principle; for the reason that the statute gives no appeal. Wade v. Commissioners, 74 N. C. 81 (1876).

Legislative Power When Section Abrogated.—The General Assembly, during the abrogation of this section could constitute other agencies to perform the duties herein imposed upon the township board of trustees. North Carolina R. Co. v. Commissioners, 82 N. C. 260 (1880).

Cited in Carolina Cent. R. Co. v. Wilmington, 72 N. C. 73 (1875); Richmond, etc., R. Co. v. Commissioners, 84 N. C. 504 (1881); Jones v. Commissioners, 107 N. C.

248, 12 S. E. 69 (1890); Board v. Commissioners, 111 N. C. 578, 16 S. E. 621 (1892); Road Com. v. Commissioners, 178 N. C. 61, 100 S. E. 122 (1919).

§ 7. No debt or loan except by a majority of voters.—No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose. (Const. 1868; 1947, c. 34.)

I. Editor's Note.
II. General Consideration.
III. Necessary Expenses.
A. General Consideration and Application.
B. School Bonds or Taxation.

Cross References.

As to municipal taxation, see § 160-56; as to election on question of county aid to railroads, see § 60-22.

For article on "Necessary Expenses," see 18 N. C. Law Rev. 93.

I. EDITOR'S NOTE.

Municipal corporations may levy a tax for necessary expenses to the constitutional limitation without a vote of the people and without legislative permission; for necessary expenses they may exceed the constitutional limitation by legislative authority, without the approval of the voters; but for purposes other than necessary, a tax cannot be levied either within or in excess of the constitutional limitation except with the approval of the voters under special legislative authority. The constitutionality of a legislative act exceeding the constitutional limitation depends upon whether or not the bill passed each branch of the legislature on three separate days, with the "aye" not "no" vote both entered on the journals of the second and third readings. See Henderson v. Wilmington, 191 N. C. 269, 132 S. E. 25 (1926).

This section was amended by vote at the general election of November 2, 1948. Prior to the amendment the last clause read "unless by a vote of the majority of the qualified voters therein". For a brief comment on the amendment, see 25 N. C. Law Rev. 395.

II. GENERAL CONSIDERATION.

Intent of Section.—This section was intended to present another check to the imprudence of county and municipal officers. Paine v. Caldwell, 65 N. C. 488 (1871).

This section is an absolute prohibition. It is cumulative and adds another restraint to § 7 of Art. V. Brodnax v. Groom, 64 N. C. 244 (1870).

Cannot Be Evaded by Legislature. — This section prohibits any county, city, town or other municipal corporation, from contracting any debt, etc., without the affirmative consent of a majority of the people of the county who are qualified to vote and a legislative act which attempts to evade the restriction which this section puts on counties, etc., to contract debts, is unconstitutional and void. Chester, etc., R. Co. v. Commissioners, 72 N. C. 486 (1875), decided prior to the amendment.

Rule and Exception Thereto. — Under this section approval of taxation by popular vote is the rule, and the power to impose a tax for a necessary expense without a vote is the exception. Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

No Vested Right by Former Construction of Section.—A public service corporation, which was granted a franchise and entered into a contract with a city when, under this section as then construed, the city was without power to construct competing works, but which constitutional provision was subsequently construed to grant such power, held to have no standing, after its franchise and contract had expired by limitation, to invoke the rule that one acquiring rights under one construction of the State law may not be deprived of them by a subsequent different construction. Hill v. Elizabeth City, 298 F. 67 (1924).

The only way to preserve the vitality of this section and § 6 of Art. 5 is to adhere to the construction, that the "special purpose" for which the "special approval" of the General Assembly is essential must be for a "necessary expense" in contemplation of the constitutional provision. Castevens v. Stanly County, 209 N. C. 75, 183 S. E. 3 (1935), citing Glenn v. Board of County Com'rs, 201 N. C. 233, 159 S. E. 439 (1931).

The term "municipal corporation" should not be construed narrowly to include only cities, towns, counties and school districts, as the Constitution contemplates a broader construction of the term, and in its broader sense the term includes all public corporations exercising governmental functions within the constitutional limitations. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

The State is not a municipality within the meaning of the Constitution, and since a city or county, in the operation of public

schools within its territory, is not a municipality but an administrative agency of the State, such administrative units, in imposing taxes necessary to the maintenance of public schools, is not required to submit the question to a vote, the limitations imposed by this section being applicable solely to municipalities. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

Although an administrative unit of the State public school system is required by the statute to submit to its voters the question of supplementing State funds to conduct schools of higher standards and longer terms, the provision for a vote is not in deference to this section and the establishment of such supplement in no wise affects the character of the unit as a State agency for the administration of the public school system. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

School Districts as Municipal Corporation.—School districts are public quasi-corporations, included in the term municipal corporations as used in this section. Smith v. School Trustees, 141 N. C. 143, 53 S. E. 524 (1906). See post, this note, "School Bonds or Taxation," III, B.

A legally qualified board of trustees of the graded schools of a town is a municipal corporation within the meaning and purport of this section. Hollowell v. Borden, 148 N. C. 255, 61 S. E. 638 (1908).

Debt. — This section and the amended Art. V, § 4, will be considered in pari materia, and the word "debt" in Art. V, § 4, will be given the same construction as has been given the word in construing this section since the legislature in framing the amendment must have had in mind the construction which has been given the word as used in this section. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938). See also, McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941).

Function Must Be Public.—A municipal corporation cannot, even with express legislative sanction, embark on any private enterprise or assume any function which is not in a legal sense public. Brown v. Board of Com'rs, 223 N. C. 744, 28 S. E. (2d) 104 (1943).

Majority of Qualified Voters Formerly Necessary.—For cases decided under the former wording of this section "unless by a vote of a majority of the qualified voters therein", see Sprague v. Board of Com'rs, 165 N. C. 603, 81 S. E. 915 (1914); Long v. Commissioners, 181 N. C. 146, 106 S. E. 481 (1921); Madry v. Scotland Neck, 214 N. C. 461, 199 S. E. 618 (1938); Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939); Twining v. Wilmington, 214 N. C. 655, 200 S. E. 416 (1939).

Same—Act Not Stating Necessity of Majority Vote.—An issue of bonds for a school district would not be declared invalid because the special act under which they were approved by the voters did not expressly require for their validity that a majority of the qualified voters of the district must vote in their favor, where it appeared that such majority, as ascertained from a valid registry, was cast in favor of the issue. Hammond v. McRae, 182 N. C. 747, 110 S. E. 102 (1921), decided prior to the amendment.

Distinct Debts May Be Voted for in One Ballot Box.—An issue of municipal bonds, when approved by the voters, under the authority of a statute passed according to the constitutional requirements, is not invalid because there were several distinct debts provided and voted for in one ballot box. This section does not require that the vote upon each distinct proposition must be in a separate ballot box. Smith v. Belhaven, 150 N. C. 156, 63 S. E. 610 (1909).

But a legislative act which authorizes an election to be held upon the question of levying a special school tax providing that if any township should cast a majority of its votes in its favor it should apply only to the township, should the county as a whole reject the proposition, and requiring but a single ballot upon two propositions, is contrary to this section and void. Hill v. Lenoir County, 176 N. C. 572, 97 S. E. 498 (1918).

When Act Does Not Limit Bond Issue.—An exception to the constitutionality of an act submitting the question of a bond issue to the voters cannot be sustained on the ground that it does not limit the amount of the bonds that may be issued for the purposes therein authorized. Waters v. Board, 186 N. C. 719, 120 S. E. 450 (1923).

When Funds Are Already on Hand. — This provision has no application where the funds to be applied are already on hand and the proposed expenditure will impose no further liability on the municipality, nor involve the imposition of further taxation upon it. Adams v. Durham, 189 N. C. 232, 126 S. E. 611 (1925). See note of this case under section 160-1 of the code.

The acquisiton of the land for a municipal airport from surplus funds was not beyond the power of the city and it in no way offended the provisions of this section. Goswick v. Durham, 211 N. C. 687, 191 S. E. 728 (1937).

When Indebtedness Already Voted on.

—That part of this section forbidding the levy of any taxes by a municipal corporation except for necessary expenses, unless by a vote of the people, applies only to such indebtedness as has not been submitted to a vote of the people. Charlotte v. Shepard & Co., 122 N. C. 602, 29 S. E. 842 (1898).

Where appropriations were made by two cities and county to airport authority out of funds not derived from ad valorem taxes and funds were free from other specified purpose or legal commitment, no question of credit or taxation in violation of this section is involved. Greensboro-High Point Airport Authority v. Johnson, 226 N. C. 1, 36 S. E. (2d) 803 (1946), distinguishing Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

Endorsement of Township Bonds by County.—Where townships are permitted to call an election for the purpose of voting upon the issuance of township bonds for the roads of the township, the proceeds to be turned over to the sole management and control of the township commissioners, with further provision that the county endorse the bonds upon being satisfied of the validity of the issuance, the endorsement by the county of the township bonds is a loan of the credit of the county, without benefit to the other townships, and contrary to this section. Commissioners v. Boring, 175 N. C. 105, 95 S. E. 43 (1918).

Authorization of Bonds without Tax to Pay Them.—The power given by a statute to a city to issue bonds with the approval of a vote of the people of the city does not confer, by implication, the power to levy a tax to pay them unless the power to levy such tax has been conferred by the act authorizing the issue and ratified by a vote of the people, as required by this section. Charlotte v. Shepard, 120 N. C. 411, 27 S. E. 109 (1897).

Taxes to Pay New Debts. — The commissioners of a town have no authority to collect taxes to pay "new debts" unless the proposition is submitted to the voters of the town, even though commanded by mandamus. Weinstein v. Commissioners, 71 N. C. 535 (1874).

Railroad Aid Bonds.—It is essential to the validity of bonds issued in aid of railroads, or other similar enterprises, by counties, townships and other municipal organizations, that the proposition shall have first had the assent of the voters in the territory affected, to be duly ascertained by an election regularly held for that purpose. Lynchburg, etc., R. Co. v. Board, 109 N. C. 159, 13 S. E. 783 (1891). See § 60-22. As to constitutional provision regarding state aid of railroads, see Art. V, § 4.

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, 164 S. E. 361 (1932).

Local Assessments to Drain Land.—No vote of the people is required on the proposition of apportioning the burden of draining lands by local assessments. Sanderlin v. Luken, 152 N. C. 738, 68 S. E. 225 (1910).

Appropriation of Taxes by Chamber of Commerce. — This section refers to the county, city, or town as a State governmental agency, and does not authorize an appropriation of a certain per cent of taxes levied upon their taxpayers for the use or disposition of a chamber of commerce of a city, without the approval of the qualified voters therein. Ketchie v. Hedrick, 186 N. C. 392, 119 S. E. 767 (1923).

Where a city sells land used for recreation purposes and turns the proceeds of the sale over to its park and recreation commission the action is not a pleading of its faith and credit so as to involve the application of this section. Hall v. Redd, 196 N. C. 622, 146 S. E. 583 (1929).

Applied in Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939), treated under Art. V, § 4.

Cited in Lane v. Stanly, 65 N. C. 153 (1871); People v. Canaday, 73 N. C. 198 (1875); Parker v. Board, 104 N. C. 166, 10 S. E. 137 (1889); Goldsboro Graded School v. Broadhurst, 109 N. C. 228, 13 S. E. 781 (1891); Railroad Co. v. Commissioners, 116 N. C. 563, 21 S. E. 205 (1895); McCless v. Meekins, 117 N. C. 34, 23 S. E. 99 (1895); Vaughn v. Board, 117 N. C. 429, 23 S. E. 354 (1895); Commissioners v. Payne, 123 N. C. 432, 31 S. E. 711 (1898); Slocum v. Fayetteville, 125 N. C. 362, 34 S. E. 436 (1899); State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900); Rodman-Heath Cotton Mills v. Waxhaw, 130 N. C. 293, 41 S. E. 488 (1902); Commissioners v. MacDonald, 148 N. C. 125, 61 S. E. 690 (1908); Commissioners v. Road Comm'rs, 165 N. C. 632, 81 S. E. 1001 (1914); Moran v. Board, 168 N. C. 289, 84 S. E. 402 (1915); Bickett v. State Tax Comm., 177 N. C. 433, 99 S. E. 415 (1919); Waters v. Board, 186 N. C. 719, 120 S. E. 450 (1923); Yarbrough v. Park Commission, 196 N. C. 284, 145 S. E. 563 (1928); Castevens v. Stanly County,

211 N. C. 642, 191 S. E. 739 (1937); Weaverville v. Hobbs, 212 N. C. 684, 194 S. E. 860 (1938). See also, McGuinn v. High Point, 219 N. C. 56, 13 S. E. (2d) 48 (1941); Horner v. Chamber of Commerce, 231 N. C. 440, 57 S. E. (2d) 789 (1950).

III. NECESSARY EXPENSES.

A. General Consideration and Application.

In General.—This section does not require that a debt, to be contracted for necessary expenses by a city or town, shall be submitted to a vote of the people therein. Tucker v. Raleigh, 75 N. C. 267 (1876). Jones v. New Bern, 152 N. C. 64, 67 S. E 173 (1910).

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 (1930).

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 (1931); Sessions v. Columbus County, 214 N. C. 634, 200 S. E. 418 (1939).

For note on "necessary expenses" of municipal corporations under this section, see 30 N. C. Law Rev. 313.

Legislative Discretion.—It is within the discretion of the legislature to authorize a county to issue bonds for necessary expenses, either with or without the approval of its voters, or to require only the approval by a majority of the votes cast at a special election authorized for the purpose, and the approval by the majority of the qualified voters is not required for their validity. Davis v. Lenoir County, 178 N. C. 668, 101 S. E. 260 (1919).

Same—Presumption.—Under legislative authority a county may issue bonds to refund its existing floating debt for necessary county expenses, in excess of the 15 cents limitation upon the $100 valuation of its taxable property according to Art. V, § 6, when coming within the provisions of the municipal finance act, c. 81, § 8, Public Laws of 1927, and where the record on appeal states that the issuance of the bonds is for necessary county purposes, and for taking care of its floating indebtedness, it will be assumed on appeal that the excess over the 15 cents valuation was for necessary county expenses, coming within the provision of this section, not requiring the question of the issuance of the bonds to be submitted to the voters of the county. Board v. Assell, 194 N. C. 412, 140 S. E. 34 (1927).

Legislative Declaration and Municipal Commissioners Finding That Tax Is for Necessary Expense Is Not Controlling.—The declaration of the General Assembly in a statute authorizing a municipality to levy a tax and the finding of the municipal commissioners that the tax is for a necessary municipal expense within the meaning of this section, is not controlling, but, when made in good faith, such declaration and finding are persuasive, and are entitled to serious consideration by the courts in determining whether the purpose for which the tax is proposed to be levied is for a necessary municipal expense within the meaning of term as used in the Constitution. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786 (1935); Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

What Are "Necessary Expenses."—The term, "necessary expenses" is not confined to expenses incurred for purposes absolutely necessary to the very life and existence of a municipality, but it has a more comprehensive meaning. Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925).

The county commissioners are the sole judges of what are "necessary expenses." Evans v. Commissioners, 87 N. C. 154 (1882); Williams v. Commissioners, 119 N. C. 520, 26 S. E. 150 (1896).

Where the purpose for which a proposed expense is to be incurred by a municipality is the maintenance of public peace or administration of justice, or partakes of a governmental nature, or purports to be an exercise by the municipality of a portion of the State's delegated sovereignty, the expense is a necessary expense within this section, and may be incurred without a vote of the people. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500.

Bonds issued for the following purposes have been held to have been issued for necessary expenses: For the payment of interest on bonds already issued for necessary purposes (Wilson v. Board, 74 N. C. 748 (1876)); the building and maintenance of public roads (Woodall v. Western Wake Highway Comm., 176 N. C. 377, 97 S. E. 226 (1918); Lassiter v. Board, 188 N. C. 379, 124 S. E. 738 (1924); Hill v. Board, 190 N. C. 123, 129 S. E. 154 (1925); Ellis

v. Greene, 191 N. C. 761, 133 S. E. 395 (1926)); paving streets (Hendersonville v. Jordan, 150 N. C. 35, 63 S. E. 167 (1908); Brown v. Hillsboro, 185 N. C. 368, 117 S. E. 41 (1923)); lighting streets (Ellison v. Williamston, 152 N. C. 147, 67 S. E. 255 (1910)) to the extent of furnishing a plant for that purpose (Fawcett v. Mt. Airy, 134 N. C. 125, 45 S. E. 1029 (1903); Swindell v. Belhaven, 173 N. C. 1, 91 S. E. 369 (1917)); furnishing sidewalks (Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925)); building bridges (Herring v. Dixon, 122 N. C. 420, 29 S. E. 368 (1898); Norfolk Southern R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924)) even though the bridge is interstate (Emery v. Commissioners, 181 N. C. 420, 107 S. E. 443 (1921)); furnishing waterworks and sewerage systems (Brockenbrough v. Board, 134 N. C. 1, 46 S. E. 28 (1903); Greensboro v. Scott, 138 N. C. 181, 50 S. E. 589 (1905); Underwood v. Asheboro, 152 N. C. 641, 68 S. E. 147 (1910); Reed v. Howerton Engineering Co., 188 N. C. 39, 123 S. E. 479 (1924)); erection of a courthouse (Halcomb v. Commissioners, 89 N. C. 346 (1883)); erection of a municipal building in a large city (Hightower v. Raleigh, 150 N. C. 569, 65 S. E. 279 (1909)); and the building of county homes (Norfolk Southern R. Co. v. Reid, 187 N. C. 320, 121 S. E. 534 (1924)). See Board of Financial Control v. Henderson County, 208 N. C. 569, 181 S. E. 636, 101 A. L. R. 783 (1935), as to municipal electric plant being a necessary expense.

Bonds for establishing and maintaining playgrounds, in populous, industrial city, for its children, are for a necessary expense. Atkins v. Durham, 210 N. C. 295, 186 S. E. 330 (1936).

The imposition of a tax or the expenditure of funds derived therefrom for municipal parks and recreational facilities is for a public purpose but it is not for a necessary municipal expense, within the meaning of this section, and the expenditure of funds for this purpose derived from a tax imposed without a referendum will be enjoined by the courts. Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

The legislature is without power to authorize a municipal corporation to issue its bonds and levy a tax for the payment of the principal and interest on such indebtedness, in order to enable it to obtain funds for the construction and maintenance of a municipal hotel. Nash v. Tarboro, 227 N. C. 283, 42 S. E. (2d) 209 (1947).

Bonds for the construction of a municipal electric power plant are for a public purpose and a necessary municipal expense, and may be issued up to the constitutional limitation without a vote of its electors and without legislative authority, and in excess of the constitutional limitation by legislative authority without a vote of the people. Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938).

Other projects which have sustained the issuance of bonds as necessary expenses, though of less frequent occurrence than those just enumerated, are: For the installation of an electric fire-alarm system (Kinston v. Security Trust Co., 169 N. C. 207, 85 S. E. 399 (1915)); purchase of an incinerator for the destruction of garbage (Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925)); erection of an abattoir (Moore v. Greensboro, 191 N. C. 592, 132 S. E. 565 (1926)); and of jetties (Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925)).

The establishment of a wharf is not a necessary expense, Henderson v. Wilmington, 191 N. C. 269, 132 S. E. 25 (1926). Nor is the erection and maintenance of a dispensary such an expense. Garsed v. Greensboro, 126 N. C. 159, 355 S. E. 254 (1900).

The building of a county fence by a county having the free-range law, between it and an adjoining county having the stock law, is not a necessary expense within the meaning of this section. Keith v. Lockhart, 171 N. C. 451, 88 S. E. 640 (1916).

But laying an assessment for building a stock-law fence in territory where the law is effective is not taxation requiring its submission to a vote of the people of the district. Shuford v. Commissioners, 86 N. C. 552 (1882); Tripp v. Commissioners, 158 N. C. 180, 73 S. E. 896 (1912).

It has long been decided that water and sewer are "necessary expenses," within the meaning of § 7, Art. VII, Constitution of North Carolina, and a vote of the people is not necessary. Storm v. Wrightsville Beach, 189 N. C. 679, 128 S. E. 17 (1925). So, also, are roads. See Davis v. Lenoir, 178 N. C. 668, 101 S. E. 260 (1919); Drysdale v. Prudden, 195 N. C. 722, 143 S. E. 530 (1928). See also, Starmount Co. v. Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933); Lamb v. Randleman, 206 N. C. 837, 175 S. E. 293 (1934); Burt v. Biscoe, 209 N. C. 70, 183 S. E. 1 (1935).

The building of a drilling tower to train the city's firemen is not a necessary expense within the meaning of this section. Wilson v. Charlotte, 206 N. C. 856, 175 S.

E. 306 (1934). But an expenditure by a municipality for special training of a police officer is a necessary expense within the meaning of this section. Green v. Kitchin, 229 N. C. 450, 50 S. E. (2d) 545 (1948), discussed in 27 N. C. Law Rev. 500.

Borrowing money to pay judgments for salaries owing to the employees of a city school in anticipation of collection of taxes levied thereon is not in contravention of this section. Hammond v. Charlotte, 206 N. C. 604, 175 S. E. 148 (1934).

The sale of refunding bonds under § 153-77, subsection (j), is a necessary expense. Morrow v. Durham, 210 N. C. 564, 187 S. E. 752 (1936). So also is the issuance of bonds by a county to refinance highway bonds issued by its townships. Thomson v. Harnett County, 209 N. C. 662, 184 S. E. 490 (1936). The expense of providing for the medical treatment and hospital care of the indigent sick and afflicted poor under § 160-229 is a necessary expense of a city. Martin v. Raleigh, 208 N. C. 369, 180 S. E. 786 (1935). See also, Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

The sale of intoxicating liquor is not a "necessary expense," nor is it a public purpose or undertaking. Newman v. Watkins, 208 N. C. 675, 182 S. E. 453 (1935).

While there is no contention that the construction, equipment, and maintenance of an airport and landing field is a necessary municipal expense within the meaning of this section, yet it may not be improper to say that man's constantly advancing progress in the conquest of the air as a medium for the transportation of commerce and for public and private use indicates the practical advantage and possible future necessity of adequate landing facilities to the same extent that paved streets and roads are now regarded for the purposes of communication and transportation on land. Goswick v. Durham, 211 N. C. 687, 191 S. E. 728 (1937), citing Hargrave v. Board of Com'rs, 168 N. C. 626, 84 S. E. 1044 (1915).

The construction, maintenance and operation of an airport by a city is a public purpose for which funds may be provided by taxation, when approved by a vote of the people in accordance with this section. Reidsville v. Slade, 224 N. C. 48, 29 S. E. (2d) 215 (1944).

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 (1932).

Where a vote of the people is not necessary to the validity of the bonds proposed to be issued if an election should be called and the tax approved by the electors of the town, such tax would be valid regardless of whether it was levied for a necessary expense. Webb v. Port Comm., 205 N. C. 663, 172 S. E. 377 (1934)

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 (1932).

The courts determine whether a given project is a necessary expense of a municipality, but the governing authorities of the municipality determine in their discretion whether such given project is necessary or needed in the designated locality. Starmount Co. v. Hamilton Lakes, 205 N. C. 514, 171 S. E. 909 (1933); Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

Expansion of City's Power Lines.—Where an incorporated city under authority of statute furnishes through its own transmission lines electricity for its citizens for hire within a circumscribed territory adjoining its limits, and the expenses incident thereto are paid out of its surplus profits, the proposition is not one that requires the approval of the voters as it does not fall within the provisions of this section, nor is it in violation of the Fourteenth Amendment to the federal Constitution. Holmes v. Fayetteville, 197 N. C. 740, 150 S. E. 624 (1929).

Bonds issued by a county for the construction and maintenance of its highways are for a necessary county expense within the intent and meaning of this section, and may be validly authorized by general or special statute and issued by the county thereunder without submitting the question of their issuance to the approval of the voters of the county. Barbour v. Wake County, 197 N. C. 314, 148 S. E. 470 (1929).

Operating and Improving Airport.—Since a municipality may not levy a tax directly for the purpose of operating, maintaining and improving an airport without a vote of the people, it may not levy a tax

for a contingent fund and thereafter in the same year appropriate money from the contingent fund thus created for the purpose of operating, maintaining, and improving the airport, since it may not do indirectly what it is without power to do directly. Sing v. Charlotte, 213 N. C. 60, 195 S. E. 271 (1938).

The construction of an annex to a county hospital, to be used principally for the care of the indigent sick of the county, is not a necessary expense of the county within the meaning of this section. Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

B. School Bonds or Taxation.

Editor's Note.—It has been held in several cases that the erection of school buildings is not a necessary expense within the purview of this section, and therefore a county cannot be brought under this indebtedness without the approval of the qualified voters. Jones v. Board, 185 N. C. 303, 117 S. E. 37 (1923); Davis v. Board, 186 N. C. 227, 119 S. E. 372 (1923). However these cases did not involve an indebtedness incurred by legislative authority in carrying on the public school system of the State and the necessary maintenance of a six-months school term, as required by § 3 of Art. 9 of the Constitution, and it has been held that the question of taxation for this purpose need not be submitted to the voters. Tate v. Board, 192 N. C. 516, 135 S. E. 336 (1926); Hartsfield v. Craven County, 194 N. C. 358, 139 S. E. 698 (1927).

The better reason advanced for this distinction is that each part of the Constitution is of equal weight and merit and this section should be construed so as not to nullify any other portion of the Constitution. In Lacy v. Fidelity Bank, 183 N. C. 373, 111 S. E. 612 (1922), the court said: "The restrictions contained in this section . . . must be understood to refer to the debts and taxes in furtherance of local measures and do not extend to a State-wide measure . . ., undertaken in obedience to a separate provision of the Constitution, and in which the counties are . . . expressly recognized as the governmental units through which the general purpose may be made effective." See annotations under § 115-99.

As to estoppel of taxpayers to deny the invalidity of a special school tax, see Carr v. Little, 188 N. C. 100, 123 S. E. 625 (1924).

The limitations of this section are not applicable to bonds or notes issued by a county, as an administrative agency of the State, under authority conferred by the County Finance Act (§ 153-77), for the purpose of erecting schoolhouses, and equipping same, or purchasing land necessary for school purposes. Hall v. Commissioners, 194 N. C. 768, 140 S. E. 739 (1927).

This section applies to local matters relating to the affairs of the county separately considered, and not to a State-wide system of education, in which the counties are acting as governmental agencies for the carrying out of the entire scheme, made mandatory by the Constitution, Art. IX, §§ 1, 2, 3, requiring the maintenance of a six-months term of public schools. Owens v. Wake County, 195 N. C. 132, 141 S. E. 546 (1928).

But the power is not given the county to issue bonds for the erection and purchase of schoolhouses without a popular vote except where such schoolhouses and necessary land therefor are required for the establishment and maintenance of a six-months school term as provided by the Constitution. Lovelace v. Pratt, 187 N. C. 686, 122 S. E. 661 (1924); Frazier v. Commissioners, 194 N. C. 49, 138 S. E. 433 (1927); Owens v. Wake County, 195 N. C. 132, 141 S. E. 546 (1928); Hall v. Commissioners, 195 N. C. 367, 142 S. E. 315 (1928).

The findings of fact disclosed that defendant county had not reduced its outstanding indebtedness during the prior fiscal year, and that it proposed to borrow money and issue its bonds to erect a schoolhouse necessary for the maintenance of the constitutional school term in the county, without submitting the question of borrowing the money to the qualified voters of the county. It was held that the limitation prescribed by Art. V, § 4, as amended, is in addition to other constitutional limitations relating to taxation, and the county may not borrow money, even for a necessary expense, without submitting the question to a vote, when its outstanding indebtedness has not been reduced during the prior fiscal year, and plaintiff taxpayer is entitled to injunctive relief restraining the issuance of the proposed bonds. Hallyburton v. Board of Education, 213 N. C. 9, 195 S. E. 21 (1938).

Where by special act the legislature grants a charter to an existing city, enlarging the city limits to take in territory within one or more nonlocal tax districts, it is not necessary, nor contrary to this section, that a vote of the people within the added territory be had either upon the question of annexing such territory or upon the question of levying school taxes therein, the object of the charter being to provide for the government, welfare and improve-

ment of the city, and not primarily for the mere maintenance of schools. Hailey v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1928).

Premiums for insurance of its public school buildings is a necessary public expense of a county. Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733 (1935).

Liability for bonds for unnecessary school buildings is not a necessary expense. Greensboro v. Guilford County, 209 N. C. 655, 184 S. E. 473 (1936)

As to school district bonds or taxes for athletic stadium, see Boney v. Board of Trustees, 229 N. C. 136, 48 S. E. (2d) 56 (1948).

§ 8. No money drawn except by law.—No money shall be drawn from any county or township treasury, except by authority of law. (Const. 1868.)

Cited in Winslow v. Commissioners, 64 N. C. 218 (1870); Faison v. Commissioners, 171 N. C. 411, 88 S. E. 761 (1916); Reed v. Farmer, 211 N. C. 249, 189 S. E. 882 (1937); Wilson v. Farmer, 211 N. C. 254, 189 S. E. 885 (1937).

§ 9. When officers enter on duty.—The county officers first elected under the provisions of this article shall enter upon their duties ten days after the approval of this Constitution by the Congress of the United States. (Const. 1868.)

Editor's Note.—Section 9 of Art. VII of the original Constitution of 1868 read as follows: "All taxes levied by any county, city, town, or township shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution." The original § 9 was repealed pursuant to c. 248 of the Public Laws of 1935 which also proposed amendments, subsequently adopted to Art. V, § 3, and Art. V, § 4. With the repeal of the original § 9, it was provided that §§ 10 through 14 of Art. VII be appropriately renumbered. Thus, the present § 9 of this article was originally § 10 of Art. VII.

§ 10. Governor to appoint justices. — The Governor shall appoint a sufficient number of justices of the peace in each county, who shall hold their places until sections four, five, and six of this article shall have been carried into effect. (Const. 1868; 1935, c. 248.)

Cross Reference.—See note under preceding section. And see §§ 7-112 et seq.

Editor's Note.—The present § 10 was originally § 11, but was renumbered pursuant to c. 248 of the Public Laws of 1935. See note under Art. VII, § 9.

Cited in Nichols v. McKee, 68 N. C. 429 (1873).

§ 11. Charters to remain in force until legally changed.—All charters, ordinances, and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this Constitution. (Const. 1868; 1935, c. 248.)

Cross Reference. — See note under § 9 of this article.

Editor's Note.—The present § 11 was originally § 12, but was renumbered pursuant to c. 248 of the Public Laws of 1935. See note under Art. VII, § 9.

§ 12. Debts in aid of the rebellion not to be paid — No county, city, town, or other municipal corporation shall assume or pay, nor shall any tax be levied or collected for the payment of any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion. (Const. 1868; 1935, c. 248.)

Editor's Note.—The present § 12 was originally § 13, but was renumbered pursuant to c. 248 of the Public Laws of 1935. See note under Art. VII, § 9.

See Leake v. Commissioners, 64 N. C. 133 (1870); Poindexter v. Davis, 67 N. C. 112 (1872); Weith v. Wilmington, 68 N. C. 24 (1873); Logan v. Plummer, 70 N. C. 388 (1874); Davis v. Board, 72 N. C. 441 (1875); Brickwell v. Commissioners, 81 N. C. 240 (1879); Wingate v. Parker, 136 N. C. 369, 48 S. E. 774 (1904); Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291 (1905); Smith v. School Trustees, 141 N. C. 143, 53 S. E. 524 (1906); Southern R. Co. v. Board, 148 N. C. 220, 61 S. E. 690 (1908); Board v. Webb, 155 N. C. 379, 71 S. E. 520 (1911).

§ 13. Powers of General Assembly over municipal corporations. — The General Assembly shall have full power by statute to modify, change, or

abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine and thirteen. (Const. 1868; 1935, c. 248.)

Editor's Note.—The present § 13 was originally § 14, which was added by the Convention of 1875, but was renumbered pursuant to c. 248 of the Public Laws of 1935. See note under Art. VII, § 9.

Municipality Subject to Legislative Control.—A municipality, such as a city, town or county, is subject to the control of the General Assembly even in respect to necessary expenses. Jones v. New Bern, 152 N. C. 64, 67 S. E. 173 (1910).

And the General Assembly may, at its discretion, abolish municipal as well as other corporations. Ward v. Elizabeth City, 121 N. C. 1, 27 S. E. 993 (1897).

Control of Municipal Contract. — The power conferred by its charter upon a city to provide water and lights, and to contract for same, provide for cleaning and repairing the streets, regulate the market, take proper means to prevent and extinguish fires, is subject to the police power of the State, with respect to rates to be charged under such contracts as the city may make under its charter with a public service corporation. Corporation Comm. v. Henderson Water Co., 190 N. C. 70, 128 S. E. 465 (1925).

Dividing County into Three Districts.—Chapter 526, Public-Local Laws 1935, providing that Cherokee County be divided into three districts and a commissioner elected from each district falls well within the full power given the General Assembly by this section. Watkins v. Johnson, 210 N. C. 449, 187 S. E. 584 (1936).

See §§ 7-112 et seq. of the Code.

Act Need Not Be General.—It is not required that the power conferred in this section should be general in its operation, or that it should in terms formally abrogate any given section therein, and substitute another in its stead, for the act making such change, local in its operation, must be given effect under its provisions, if otherwise valid. Smith v. School Trustees, 141 N. C. 143, 53 S. E. 524 (1906); Tyrrell County v. Holloway, 182 N. C. 64, 108 S. E. 337 (1921).

Charters and Ordinances Entrusted to Legislature.—Under this section all charters, ordinances and provisions relating to municipal corporations are entrusted to the discretion of the legislature. Harriss v. Wright, 121 N. C. 172, 28 S. E. 269 (1897).

Creation of Highway Commission.—The legislature has authority under this section to create a highway commission for a county, and give it control over its bridges and highways, their maintenance and supervision, etc., or subdivide this agency into several parts over defined territory. Commissions v. Road Comm'rs, 165 N. C. 632, 81 S. E. 1001 (1914); Ellis v. Greene, 191 N. C. 761, 133 S. E. 395 (1926).

The powers given to county commissioners over public highways, may be taken away from them and conferred by statute upon other political agencies of the State. Day v. Commissioners, 191 N. C. 780, 133 S. E. 164 (1926).

Appointing City Aldermen.—The delegation by the legislature to the Governor of the State of the power of appointing a portion of the aldermen of a city is within the scope of the power entrusted to the discretion of the legislature by this section. Harriss v. Wright, 121 N. C. 172, 28 S. E. 269 (1897).

Compelling County to Issue Bonds.—The legislature has power to pass an act compelling a county to issue bonds to fund its existing indebtedness incurred for necessary expenses. Jones v. Commissioners, 137 N. C. 579, 50 S. E. 291 (1905).

Establishment of School District.—The establishing of a school district relates to public municipal corporations, which may be done by special legislative enactment under this section. Dickson v. Brewer, 180 N. C. 403, 104 S. E. 887 (1920).

Creating County Board of Audit and Finance. — The legislature has constitutional power to provide a board of audit and finance for a particular county and to direct that payment of an expert accountant authorized thereunder be made by the county treasurer as a charge against the county's public funds, upon an order made by said board in a certain prescribed manner. Southern Audit Co. v. McKensie, 147 N. C. 461, 61 S. E. 283 (1908).

Quoted in Board of Trustees v. Webb, 155 N. C. 379, 71 S. E. 520 (1911); Penny v. Salmon, 217 N. C. 276, 7 S. E. (2d) 559 (1940).

Cited in Rhodes v. Hampton, 101 N. C. 629, 8 S. E. 219 (1888); Board v. Commissioners, 111 N. C. 578, 16 S. E. 621 (1892); Gattis v. Griffin, 125 N. C. 332, 34 S. E. 429 (1899) (dis. op.); In re Spease Ferry, 138 N. C. 219, 50 S. E. 625 (1905); Crocker v. Moore, 140 N. C. 429, 53 S. E. 229 (1906); Bunch v. Commissioners, 159 N. C. 335, 74 S. E. 1048 (1912); Mann v. Allen, 171 N. C. 219, 88 S. E. 235 (1916); Township Road Comm. v. Board, 178 N. C. 61, 100 S. E. 122 (1919).

ARTICLE VIII

Corporations Other than Municipal

§ 1. 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. (Const. 1868; 1915, c. 99.)

Editor's Note.—Section 1 in the Constitution of 1868 was as follows: "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of corporations cannot be attained under general laws. All general laws and special acts passed, pursuant to this section, may be altered from time to time or repealed." This section was stricken out and the present § 1 substituted therefor pursuant to c. 99, Public Laws of 1915, ratified by the people in November, 1916, and effective January 10, 1917.

In General.—Except for purposes of absolute repeal which is retained throughout as essential to the proper exercise and enforcement of the police powers of government, and except, also, in the instances expressly designated in this section, this section withdraws from the General Assembly any and all power by special enactments to create, extend, alter, or amend the charter of all private business corporations, and all quasi-public corporations, such as railroads, incorporated turnpike or toll roads, bridge companies, and the like, and also those corporations which while having at times and to some extent powers appertaining to government are in fact and in truth business corporations for the purpose principally of promoting private interest. Watts v. Lenoir, etc., Turnpike Co., 181 N. C. 129, 106 S. E. 497 (1921).

The title of this section, which must be read into the text to give the intended classification significance, refers to "corporations other than municipal," thus classifying all public corporations as municipal. Wells v. Housing Authority, 213 N. C. 744, 197 S. E. 693 (1938).

Before the constitutional prohibition of this section, against creating corporations or amending their charters by special act, the General Assembly had granted numerous charters to utility companies giving them authority to set their own rates. However, such charter authority does not preclude rate regulation under the power of the State. Contracts between utilities and consumers setting the price of current are also subject to rate regulation. See 12 N. C. Law Rev. 296.

Purpose of Section.—"The purpose and effect of this section is to enable the State to control, modify or repeal corporate powers, thus avoiding the effect of the doctrine announced in Dartmouth College v. Woodward, 4 Wheat. (17 U. S.) 518, 4 L. Ed. 629 (1819)." Connor & Cheshire Const. of N. C. (anno.) pages 339, 340, cited and approved in Elizabeth City Water, etc., Co. v. Elizabeth City, 188 N. C. 278, 124 S. E. 611 (1924). See also, Railroad Co. v. Dortch, 124 N. C. 663, 33 S. E. 1014 (1899).

Applicable to Private Corporation.—The prohibition contained in this section refers only to private or business corporation, and does not refer to public or quasi-public corporation acting as governmental agencies. Mills v. Com'rs, 175 N. C. 215, 95 S. E. 481 (1918); Dickson v. Brewer, 180 N. C. 403, 104 S. E. 887 (1920). See Webb v. Port Comm., 205 N. C 663, 172 S. E. 377 (1934).

Under this interpretation, the sections should be construed in connection with § 2, dealing with "dues from corporations;" § 3, defining corporations as including "associations and joint stock companies," and it should be noted that if § 4 (properly belonging in Art. VII) included corporations as governmental agencies, it would be meaningless. Kornegay v. Goldsboro, 180 N. C. 441, 105 S. E. 187 (1920).

The provisions of this section, prohibiting the legislature from creating a corporation or extending, altering or amending its charter by special act has been held to apply only to private or business corporations; and where the legislature by special act amending the charter of a city authorizes it to purchase electricity and resell it

to its inhabitants and those within a three-mile zone of the city, the power to sell to such individuals and corporations does not detract from the public service or destroy the public character of the municipality, and where the same power is given the city by general statute also, the exercise of the power thus conferred will not be enjoined. Holmes v. Fayetteville, 197 N. C. 740, 150 S. E. 624 (1929).

Legislature May Create Corporation for Public Purpose.—The legislative power as to State and political and administrative subdivisions thereof is restrained only by the limitations imposed by the State Constitution or that of the United States, and there is no constitutional limitation on power of the General Assembly to create a corporation for a public purpose. Brumley v. Baxter, 225 N. C. 691, 36 S. E. (2d) 281, 162 A. L. R. 930 (1945).

A commission created as an agency of the State to form the governmental function of providing port facilities for the commerce of the State in the public interest, and not for private gain, is a public corporation, and the legislature is not prohibited from creating such corporation by this section, nor is the act creating it a special act within the meaning of this section, and the commission may lawfully exercise all powers conferred upon it in order to perform its duties as prescribed by the act. Webb v. Port Comm., 205 N. C. 663, 172 S. E. 377 (1934).

Power to Extinguish Corporations.—The General Assembly may, at its discretion, abolish municipal as well as other corporations, because they are all alike creatures of its will, and exist only at its pleasure. Ward v. Elizabeth City, 121 N. C. 1, 27 S. E. 993 (1897).

Right of Alteration a Part of Every Charter.—The provisions of this section, affecting the organization of corporations, and specifically providing that all "such laws or special acts may be altered from time to time or repealed," etc., enters into every charter taken out or corporation formed thereunder, and any such corporation may not complain when a statutory repeal or amendment has been made, on the ground that it works a hardship on it or impairs the value of its property, unless vested rights have been prior acquired by it which have been impaired or destroyed by the repealing or amendatory act complained of. State v. Cantwell, 142 N. C. 604, 55 S. E. 820 (1906); Power Co. v. Whitney Co., 150 N. C. 31, 63 S. E. 188 (1908); Elizabeth City Water, etc., Co. v. Elizabeth City, 188 N. C. 278, 124 S. E. 611 (1924).

"Special Act" Only Prohibited. — This section only prohibits the enactment of a special act and an act which relates to all municipal corporations of a county, including cities, town, townships, and school districts is not a special act within its meaning and intent. Kornegay v. Goldsboro, 180 N. C. 441, 105 S. E. 187 (1920).

Effect of Dissolution upon Corporate Property.—Upon the dissolution or extinction of a corporation under this section for any cause, real property conveyed to it in fee does not revert to the original grantors or their heirs, and its personal property does not escheat to the State; and this is so whether or not the duration of the corporation was limited by its charter or general statute. Wilson v. Leary, 120 N. C. 90, 26 S. E. 630 (1897), overruling Fox v. Horah, 36 N. C. 358 (1841).

Applied in Coleman v. Sou. R. Co., 138 N. C. 351, 50 S. E. 690 (1905).

Cited in Carolina Coal, etc., Co. v. Southern R. Co., 144 N. C. 732, 57 S. E. 444 (1907); Liggett Co. v. Lee, 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 25 A. L. R. 699 (1933) (dis. op.); Lee v. Poston, 233 N. C. 546, 64 S. E. (2d) 835 (1951).

§ **2. Debts of corporations, how secured.**—Dues from corporations shall be secured by such individual liabilities of the corporations, and other means, as may be prescribed by law. (Const. 1868.)

§ **3. What corporations shall include.**—The term "corporation," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons. (Const. 1868; 1915, c. 99.)

Where Corporate Powers Extinguished.—Where the legislature deprived the board of township trustees of its existence as a municipal corporation, the right to sue and be sued are likewise extinguished, and hence it cannot thereafter be a party to a suit. Wallace v. Trustees, 84 N. C. 164 (1881). As to power to extinguish corpo-

rations, see note of Ward v. Elizabeth City, 121 N. C. 1, 27 S. E. 993 (1897) under § 1.

Stated in Barker v. Southern R. Co., 137 N. C. 214, 49 S. E. 115 (1904).

§ 4. **Legislature to provide for organizing cities, towns, etc.**—It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations. (Const. 1868; 1915, c. 99.)

Editor's Note.—Pursuant to c. 99, Public Laws of 1915, § 4 of the original Constitution of 1868 was amended to read as the present § 4 by adding "by general laws" after "to provide" and by changing the word "assessments" to "assessment." This section, in substance, constitutes a limitation on the provision of Art. VII, § 7 and must be construed therewith. One court has said that this section properly belongs in Art. VII. Kornegay v. Goldsboro, 180 N. C. 441, 105 S. E. 187 (1920). The searcher is therefore referred to the note placed under that article.

In General.—The court in Pullen v. Raleigh, 68 N. C. 451 (1873), said: "This (section) seems to give a general control to the legislature on the subject of municipal corporations, and the legislature may, under it, restrict the power of taxation by corporations as it may think proper, due regard being had to other parts of the Constitution."

Municipal corporations are instrumentalities of the State for the administration of local government. They are created by the General Assembly under the general authority conferred by this section. They have such powers as are expressly conferred by statute and those necessarily implied therefrom. Grimesland v. Washington, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

Municipal corporations derive their powers almost solely from legislative enactment under this section, and are subject to statutory restrictions and regulations of their taxing power. Purser v. Ledbetter, 227 N. C. 1, 40 S. E. (2d) 702 (1946).

Although a municipality may ordinarily levy a tax, as a necessary expense in the cases mentioned in Art. 7, § 7, without submitting the question to the qualified voter, it may not do so where the legislature by statute requires the consent of such voter. Wadsworth v. Concord, 133 N. C. 587, 45 S. E. 948 (1903); Robinson v. Goldsboro, 135 N. C. 382, 47 S. E. 462 (1904); Ellison v. Williamston, 152 N. C. 147, 67 S. E. 255 (1910) It is for the legislature to decide when it is necessary to pass a restrictive statute. State v. Irvin, 126 N. C. 989, 35 S. E. 430 (1900). As to specific cases wherein it is necessary to secure the consent of the voters, see Art. 7, § 7 and note thereto.

The provisions of this section relate to municipal corporations as originally formed under legislative enactment, and is more restrictive in limiting the municipality in contracting debts or pledging their credit than Art. VII, § 7, which requires an election by its voters to do so, when not for necessary expenses. Waters v. Comrs., 186 N. C. 719, 120 S. E. 450 (1923).

Authority May Be Enlarged, Abridged or Withdrawn. — The authority of cities and towns as instrumentalities for the administration of local government may be enlarged, abridged or withdrawn entirely at the will or pleasure of the legislature. Murphy v. Webb & Co., 156 N. C. 402, 72 S. E. 460 (1911); Rhodes v. Asheville, 230 N. C. 134, 52 S. E. (2d) 371 (1949).

The legislature may restrict or limit the power of incorporated towns or cities to tax or contract debts for purposes which fall within the class of necessary expenses, for they are but the State's instrumentalities for the administration of local government; and when this restriction is thus placed upon them, or it is required of them to submit the question of a bond issue to popular vote, and an issue of bonds is made without compliance therewith, the issue is invalid. Murphy v. Webb & Co., 156 N. C. 402, 72 S. E. 460 (1911), and cases cited therein.

The setting up of a municipal corporation by the legislature at any place, under this section, is left to legislative discretion. Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649 (1932).

Counties, cities and towns are governmental agencies of the State, created by the legislature for administrative purposes, and the legislature retains control and supervision over both classes of municipal corporations, limited only by this section. Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

Not Applicable to Special Assessments.

—It seems that this section does not apply to special assessments for local municipal improvements, Raleigh v. Peace, 110 N. C. 32, 14 S. E. 521 (1892). It is said by the court in this case: "Even if it did apply, an act of the legislature authorizing an assessment is not void because it does not prescribe all of the particulars relating to such assessment. It is sufficient if it authorizes a fair and equitable method of ascertaining the peculiar benefits conferred upon the property, and apportioning the costs between the abutting owners."

School District Not Included. — A school district is not within the purview of the provisions of this section, it being not a city, town or incorporated village. Felmet v. Commissioners, 186 N. C. 251, 119 S. E. 353 (1923); Waters v. Comrs., 186 N. C. 719, 120 S. E. 450 (1923).

Alteration of Charter Not Forbidden. —This section does not forbid altering or amending charter of cities, towns and incorporated villages or conferring upon municipal corporations additional powers or restricting the powers theretofore vested in them. Holton v. Mocksville, 189 N. C. 144, 126 S. E. 326 (1924). See Deese v. Lumberton, 211 N. C. 31, 188 S. E. 857 (1936).

Control of Finances.—The legislature has plenary power to control the finances of the municipal corporations which it creates, and to direct how their revenues shall be applied. Hence it can direct that revenues derived from municipal enterprises shall be applied on outstanding bonds as well as upon bonds to be issued thereafter. George v. Asheville, 80 F. (2d) 50, 103 A. L. R. 568 (1935).

Applied in Hutton v. Webb, 124 N. C. 749, 33 S. E. 169 (1899); Brockenbrough v. Commissioners, 134 N. C. 1, 46 S. E. 28 (1903).

Cited in Bradshaw v. High Point, 151 N. C. 517, 66 S. E. 601 (1909); Underwood v. Ashboro, 152 N. C. 641, 68 S. E. 147 (1910); Winston v. Wachovia Bank, etc., Co., 158 N. C. 512, 74 S. E. 611 (1912); Holmes v. Fayetteville, 197 N. C. 740, 150 S. E. 624 (1929); Webb v. Port Comm., 205 N. C. 663, 172 S. E. 377 (1934); Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934); Williamson v. High Point, 213 N. C. 96, 195 S. E. 90 (1938); Starmount Co. v. Ohio Sav. Bank, etc., Co., 55 F. (2d) 649 (1932).

ARTICLE IX

EDUCATION

§ 1. Education shall be 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. (Const. 1868.)

Editor's Note.—This section constitutes the corner-stone in the foundation on which rest the provisions of the following sections, the courts in practically all the cases referring to the provision hereof and using them as a supplemental basis for the decisions primarily falling under one or more of the subsequent sections. Reference, therefore, is here made to the notes placed under the sections following in this article.

This and the following sections are mandatory in their provisions. Fuller v. Lockhart, 209 N. C. 61, 182 N. C. 733 (1935). Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937). See also, Elliott v. State Board of Equalization, 203 N. C. 749, 166 S. E. 918 (1932).

Quoted in Collie v. Franklin County Com'rs, 145 N. C. 170, 59 S. E. 44 (1907); Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936).

Cited in Julian v. Ward, 198 N. C. 480, 152 S. E. 401 (1930); Reid v. City Coach Co., 215 N. C. 469, 2 S. E. (2d) 578, 123 A. L. R. 140 (1939); Fletcher v. Collins, 218 N. C. 1, 9 S. E. (2d) 606 (1940).

§ 2. General Assembly shall provide for schools; separation of the races.—The General Assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race. (Const. 1868; Convention 1875.)

Cross Reference.—See Art. IX, § 5.

Editor's Note.—The last sentence was added by the Convention of 1875. For note on the "separate but equal"

test of race discrimination in graduate education, see 30 N. C. Law Rev. 153.

In General.—It was said by the court in Lane v. Stanly, 65 N. C. 153 (1871): "It will be seen that the Constitution establishes the public school system, and the General Assembly provides for it, by its own taxing power, and by the taxing power of the counties, and the State Board of Education, by the aid of school committees, manage it. It will be observed that it is to be a 'system'; it is to be 'general', and it is to be 'uniform'. It is not to be subject to the caprices of localities, but every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulations."

The requirement of this section of the Constitution, that our public school system shall be uniform by legislative authority, relates to the uniformity of the "system," and not to the uniformity of the class or kind of the "schools;" and thus qualifying the word "system," it is sufficiently complied with where, by statute or authorized regulation of the public school authorities, provision is made for establishment of schools of like kind throughout all sections of the State and available to all of the school population of the territories contributing to their support. Board v. County Com'rs, 174 N. C. 469, 93 S. E. 1001 (1917).

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, 166 S. E. 918 (1932).

Duty on Legislature.—It is the province of the General Assembly, and not of the State Board of Education, to establish a uniform system of public schools. Board v. State Board, 114 N. C. 313, 19 S. E. 277 (1894). See also, Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The establishment and maintenance of a general and uniform system of public schools is upon and exclusively within the province of the General Assembly. Moore v. Board of Education, 212 N. C. 499, 193 S. E. 732 (1937), and cases cited therein.

The establishment and operation of the public school system is under the control of the legislative branch of the government, subject only to the pertinent constitutional provisions as to uniformity, as provided in this section, and length of term, as provided in the following section. Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

This section contemplates that the General Assembly shall provide a State system of public schools to the end that every child between the ages of six and twenty-one years, without regard to the county in which such child resides, shall have an opportunity to attend a school in which standards set up by the State are maintained and wherein tuition shall be free of charge, and it is the duty of the commissioners of each county, when such State system has been provided, to maintain in each district of the county one or more schools for the constitutional school term. Marshburn v. Brown, 210 N. C. 331, 186 S. E. 265 (1936).

Same—Mandatory.—The provisions of our Constitution, Art. IX, §§ 1, 2, 3, are mandatory that the legislature provide by "taxation and otherwise for general and uniform system of public education, free of charge, to all of the children of the State from six to twenty-one years," etc., and for the continuance of the school term in the various districts for at least six months in each and every year, recognizing the counties of the State and designating them as the governmental agencies through which the legislature may act in the performance of this duty and in making its measure effective Lacy v. Fidelity Bank, 183 N. C. 373, 111 S. E. 612 (1922). See Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937). See also, Collie v. Franklin County Com'rs, 145 N. C. 170, 59 S. E. 44 (1907).

The provision of this section is mandatory and may not be disregarded either by the legislature or by officials charged with the duty of administering the law. Blue v. Durham Public School Dist., 95 F. Supp. 441 (1951).

Method of Distribution of Allowance.—County high schools are entitled to have a special allowance made to them in the yearly estimate of the county board of education for a four-months term (now six); but it is otherwise as to a school which is in strictness one of a town or city, governed by local authority and accessible only to the school population of the specified district, for such is not a part of our public school system; and this class of high schools may only receive their per capita or pro rata share of the estimate according to average and actual attendance and according to the provision of the statute or authoritative regulations applicable. Board v. County Commissioners, 174 N. C. 469, 93 S. E. 1001 (1917).

All of the funds raised in the State for common school purposes should be distributed per capita among the beneficiaries

and not be retained in the counties where it is raised. Board v. State Board, 114 N. C. 313, 19 S. E. 277 (1894); School Commissioners v. Board, 169 N. C. 196, 85 S. E. 138 (1915). And in the distribution of the fund the General Assembly may not discriminate in favor, or to the prejudice of either the white or colored races. Hooker v. Greenville, 130 N. C. 472, 42 S. E. 141 (1902).

Racial Discrimination.—An act of the legislature which provides for the erection of a schoolhouse in a certain school district from the proceeds of a bond issue to be voted upon therein, "for the whites" in that district, violates the plain mandate of this section, and a purchaser of these bonds, though issued according to all other legal requirements, may refuse to accept them on the ground of their being invalid. Williams v. Bradford, 158 N. C. 36, 73 S. E. 154 (1911).

Separate Buildings, Teachers, etc. — This section commands that the children of each race are to be taught in separate buildings and by separate teachers. Lowery v. School Trustees, 140 N. C. 33, 52 S. E. 267 (1905).

Under this section the school building now provided for the colored children cannot be taken for use of white children. Lowery v. School Trustees, 140 N. C. 33, 52 S. E. 267 (1905).

Exemption of School Bonds from Taxation Is Valid.—See Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936).

County Need Not Assume Bonds of Unnecessary School Buildings.—Where a special charter school district and a city operating schools within a special charter school district coterminous with its corporate limits, issue bonds, respectively, for school sites, buildings, and maintenance of schools in order to provide better schools within the districts than those provided by the General Assembly for the county generally, in accordance with intent of the General Assembly in creating such special charter districts, but at the time such bonds are issued they are not reasonably essential and necessary for the operation of schools in the districts for the minimum constitutional term of six months, the city and special charter school district are not entitled to mandamus to force the county to assume such bonds upon the taking over by the county of the buildings as a part of the general system of public schools. Greensboro v. Guilford County, 209 N. C. 655, 184 S. E. 473 (1936).

Quoted in Epps v. Carmichael, 93 F. Supp. 327 (1950).

Cited in State v. Wolf, 145 N. C. 440, 59 S. E. 40 (1907); Julian v. Ward, 198 N. C. 480, 152 S. E. 401 (1930); Posey v. Board of Education, 199 N. C. 306, 154 S. E. 393 (1930); Benton v. Board of Education, 201 N. C. 653, 161 S. E. 96 (1931); Allison v. Sharp, 205 N. C. 477, 184 S. E. 27 (1936); Board of Education v. Wilson, 215 N. C. 216, 1 S. E. (2d) 544 (1939); Reid v. City Coach Co., 215 N. C. 469, 2 S. E. (2d) 578, 123 A. L. R. 140 (1939); Fletcher v. Collins, 218 N. C. 1, 9 S. E. (2d) 606 (1940); Winborne v. Taylor, 195 F. (2d) 649 (1952).

§ 3. **Counties to be divided into districts.**—Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment. (Const. 1868; 1917, c. 192.)

Editor's Note. — This section was amended by the substitution of "six" for "four" pursuant to c. 192, Public Laws of 1917, ratified by the people in November, 1918.

Generally. — In discharging the duty, imposed by this section, to keep the public schools open for at least four months (now six) every year, the county commissioners cannot disregard the limitations imposed by Art. V, § 1, as to the amount of tax to be levied. Board v. Commrs., 111 N. C. 578, 16 S. E. 621 (1892). But see Board v. County Commissioners, 174 N. C. 469, 93 S. E. 1001 (1917).

Under this section, the State is required to be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in the year. For a long period of its history, the State performed this duty by proxy, maintaining the schools through the agency of the counties; and this section denounces as a criminal offense the failure of their tax levying bodies to comply with the requirement that the schools be maintained at least six months in the year. Bridges v. Charlotte, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

This section is mandatory, but the mode of performance is prescribed by statute. Hickory v. Catawba County, 206 N. C. 165, 173 S. E. 56 (1934). See Mebane Graded School Dist. v. Alamance County, 211 N. C. 218, 189 S. E. 873 (1937).

It does not apply to high schools. Kreeger v. Drummond, 235 N. C. 8, 68 S. E. (2d) 800 (1952), reh. den. 235 N. C. 758, 69 S. E. (2d) 721 (1952).

Counties May Be Directed to Provide Funds.—By reason of this constitutional mandate it is within the power of the General Assembly to authorize and direct the counties of the State as administrative units or governmental agencies to provide the necessary funds by taxation or otherwise. Harrell v. Board of Com'rs, 206 N. C. 225, 173 S. E. 614 (1934).

Legislative Function.—It is a legislative function to formulate the means of carrying out the provisions of this section. Wilkinson v. Board of Education, 199 N. C. 669, 155 S. E. 562 (1930).

The establishment and operation of the public school system is under the control of the legislative branch of the government, subject only to pertinent constitutional provisions as to uniformity, as provided in the preceding section, and length of term, as provided in this section. Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).

Legislative Discretion. — This section having required a public school system of the State to have at least six-months terms in each year, leaves it to the discretionary power of the legislature to fix terms in excess of that period. Frazier v. Board of Com'rs, 194 N. C. 49, 138 S. E 433 (1927).

A county is an administrative unit of the State in our State-wide public school system, and under mandate of this section, a statute requiring a county to maintain at least a six-months school term in each of its school districts and to provide the necessary funds therefor by taxation or otherwise, is valid. Evans v. Mecklenburg County, 205 N. C. 560, 172 S. E. 323 (1934).

The counties are made the governmental agencies of the State, under the provisions of this section in the maintenance of the constitutional six-months term of public school, and the county boards of education are given power to create, divide, abolish and consolidate school districts in accordance with a county-wide plan. Elliott v. State Board of Equalization, 203 N. C. 749, 166 S. E. 918 (1932).

It is the duty of the commissioners of the various counties in this State to maintain at least a six-months term of public school in their respective counties, subject to indictment for their failure to do so. Reeves v. Board of Education, 204 N. C. 74, 167 S. E. 454 (1933).

It is the duty of the State under this section to provide a general and uniform State system of public schools of at least six months in every year wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one. It is a necessary expense and a vote of the people is not required to make effective these and other constitutional provisions in relation to the public school system of the State. Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937). See also, Fuller v. Lockhart, 209 N. C. 61, 182 S. E. 733 (1935).

Discretion of General Assembly Rules as to Financing Public School System.—Under the mandatory provision of this section in relation to the public school system of the State, the financing of the public school system of the State is in the discretion of the General Assembly by appropriate legislation, either by State appropriation or through the county acting as an administrative agency of the State. Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937).

Building and Equipment Necessary for School Term.—Under this section sites, buildings, and equipment acquired, constructed, and used by a school district were deemed reasonably essential and necessary for the conduct and operation of the six-months school term at the time the said sites, buildings, and equipment were acquired and constructed. Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E 873 (1937).

Assumption of Indebtedness. — When necessary to maintain the six-months term of public schools required by this section it is within the legislative authority in establishing its State-wide system to assume an indebtedness of a school district therefor, including the cost of necessary buildings, and direct that it be provided for by the respective counties as administrative units of the public school system of the State. Lovelace v. Pratt, 187 N. C. 686, 122 S. E. 661 (1924).

The fact that this section provides that county commissioners failing to perform their duties in regard to the maintenance of the required school term shall be guilty of a misdemeanor, does not preclude a writ of mandamus to compel the assumption by the county of indebtedness incurred by the districts for the erection and equipment of school buildings necessary to the constitutional school term. Hickory v. Catawba County, 206 N. C. 165, 173 S. E. 56 (1934).

Redistricting for School Purposes.—See

Moore v. Board of Education, 212 N. C. 499, 193 S. E. 732 (1937).

Issuance of Mandamus.—This section of the Constitution has committed to the judgment and discretion of the county commissioners the manner and method of levying taxes to maintain a four-months minimum period (now six) of the public schools, and in the exercise thereof the courts will not interfere by civil process, mandamus or otherwise, unless their action is so unreasonable as to amount to a manifest abuse of power. County Board v. Board, 150 N. C. 116, 63 S. E. 724 (1909).

Immediately after filing the opinion in this case, the legislature (of 1909), then in session, passed an act giving the county boards of education the right to sue out a mandamus in such cases.—Ed. Note.

See Mebane Graded School Dist. v. Alamance County, 211 N. C. 213, 189 S. E. 873 (1937), citing Hickory v. Catawba County, 206 N. C. 165, 173 S. E. 56 (1934), where it was held that resort may be had to the courts to compel performance of the duties of this section by mandamus when indictment of the defendants would not be an adequate remedy

Applied in Powell v. Bladen County, 206 N. C. 46, 173 S. E. 50 (1934).

Quoted in Mecklenburg County v. Piedmont Fire Ins. Co., 210 N. C. 171, 185 S. E. 654 (1936).

Cited in Collie v. Franklin County Com'rs, 145 N. C. 170, 59 S. E. 44 (1907); Julian v. Ward, 198 N. C. 480, 152 S. E. 401 (1930); School Committee v. Taxpayers, 202 N. C. 297, 162 S. E. 612 (1932); School Committee v. Taxpayers, 202 N. C. 382, 162 S. E. 907 (1932); Greensboro v. Guilford County, 209 N. C. 655, 184 S. E. 473 (1936); East Spencer v Rowan County, 212 N. C. 425, 193 S. E. 837 (1937); Board of Education v. Wilson, 215 N. C. 216, 1 S. E. (2d) 544 (1939); Fletcher v. Collins, 218 N. C. 1, 9 S. E. (2d) 606 (1940) (dis. op.).

§ 4. **What 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 now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may 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 ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever. (Const. 1868; Convention 1875.)

Editor's Note.—Section 4 of the Constitution of 1868, which was changed to read as the present § 4 by the Convention of 1875, was as follows: "The proceeds of all lands that have been, or hereafter may be granted by the United States to this State and not otherwise specially appropriated by the United States or heretofore by this State; also, all moneys, stocks, bonds, and other property now belonging to any fund for purposes of education; also, net proceeds that may accrue to the State from sales of estrays, or from fines, penalties, and forfeitures; also, the proceeds of all sales of the swamp land belonging to the State; also, all moneys that shall be paid as an equivalent for exemption from military duty; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting in this State a system of free public schools, and for no other purposes or uses whatsoever."

Stated in McDonald v. Morrow, 119 N. C. 666, 26 S. E. 132 (1896); Bear v. Commissioners, 124 N. C. 204, 32 S. E. 558 (1899); Collie v. Franklin County Com'rs, 145 N. C. 170, 59 S. E. 44 (1907).

§ 5. **County school fund; proviso.**—All moneys, stocks, bonds, and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and

shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State: Provided, that the amount collected in each county shall be annually reported to the Superintendent of Public Instruction. (Const. 1868; Convention of 1875.)

Editor's Note.—This section was added by the Convention of 1875.

In General.—This section appropriates all fines for violation of the criminal laws of the State for establishing and maintaining free public schools in the several counties, whether the fines are for violation of town ordinances made misdemeanors by statute or other criminal statutes. Board v. Henderson, 126 N. C. 689, 36 S. E. 158 (1900).

This section was designed in its entirety to secure two wise ends, namely: (1) To set apart the property and revenue specified therein for the support of the public school system; and (2) to prevent the diversion of public school property and revenue from their intended use to other purposes. Boney v. Board of Trustees, 229 N. C. 136, 48 S. E. (2d) 56 (1948).

Fines, etc., Must Be Given by Law.—Under this section penalties and forfeitures belong to the State for free school purposes only when given by law to the State. Carter v. Wilmington, etc., R. Co., 126 N. C. 437, 36 S. E. 14 (1900), and cases there cited.

And Municipal Clerk Is Not Entitled to Fees from Fines.—By provision of this section, the clear proceeds of fines collected by the clerk of a municipal court belong to the county school fund, and the clerk is not entitled to retain a percentage thereof as his fees, regardless of the provisions of public-local laws relating to his compensation. County Board of Education v. High Point, 213 N. C. 636, 197 S. E. 191 (1938).

The maintenance of an athletic field and playground is a proper use of school funds, since physical training is a legitimate function of education. Boney v. Board of Trustees, 229 N. C. 136, 48 S. E. (2d) 56 (1948).

An agreement under which a graded school district, without monetary consideration, was to transfer in fee to a municipality a tract of school property, and the municipality was to construct thereon an athletic stadium and grant the graded schools of the district free and unlimited use of the stadium and grounds during the school term except when required for regularly scheduled games of a professional baseball association, did not constitute a diversion of school property in contravention of this section. Boney v. Board of Trustees, 229 N. C. 136, 48 S. E. (2d) 56 (1948).

The "clear proceeds" of a forfeiture are defined as the amount of the forfeit less the cost of collection, meaning thereby the citations and process against the bondsman usual in the practice. Hightower v. Thompson, 231 N. C. 491, 57 S. E. (2d) 763 (1950).

Parties.—A suit to compel a city to pay fines and penalties to the county board of education should be brought against the city or the board of aldermen, and not against the chief of police Bearden v. Fullam, 129 N. C. 477, 40 S. E. 204 (1901).

Applied in In re Wiggins, 171 N. C. 372, 88 S. E. 508 (1916).

Cited in State v. Yandle, 235 N. C. 532, 70 S. E. (2d) 565 (1952).

§ 6. **Election of trustees, and provisions for maintenance, of the University.**—The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, 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 University; 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. (1872-3, c. 86.)

Editor's Note.—Pursuant to c. 86, Public Laws of 1872-73, this § 6 was substituted for § 5 of the Constitution of 1868, which was as follows: "The University of North Carolina, with its lands, emoluments and franchises, is under the control of the State, and shall be held to an inseparable connection with the free public school system of the State."

§ 7. **Benefits of the University.**—The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the 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. (Const. 1868.)

The right of succession by escheat to all property, when there is no wife or husband or parties entitled to inherit or take under the statutes of descent and distribution, has been conferred upon the University of North Carolina by this section, and extended by several statutes which are now G. S., §§ 116-20 through 116-25. Board of Education v. Johnston, 224 N. C. 86, 29 S. E. (2d) 126 (1944).

Applied in In re Neal, 182 N. C. 405, 109 S. E. 70 (1921); University of North Carolina v. High Point, 203 N. C. 558, 166 S. E. 511 (1932); Carter v. Smith, 209 N. C. 788, 185 S. E. 15 (1936).

§ 8. **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, except those mentioned in section five of this article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. The first appointments under this section shall be: Two members appointed from educational districts for terms of two years; two members appointed from educational districts for terms of four years; two members appointed from educational districts for terms of six years; and two members appointed from educational districts for terms of eight years. One member at large shall be appointed for a period of four years and one member at large shall be appointed for a period of eight years. All subsequent appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the board. The board shall elect a chairman and vice chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members shall be provided by the General Assembly. (Const. 1868; 1941, c. 151; 1943, c. 468.)

Editor's Note.—This section was amended by vote at general election of November 7, 1944.

Pursuant to c. 151 of the Public Laws of 1941, the former §§ 8 and 9 of the Constitution of 1868 were repealed and the present § 8 substituted in lieu thereof. Such former sections read as follows: "§ 8. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction, and Attorney-General shall constitute a State Board of Education."

"§ 9. The Governor shall be president and the Superintendent of Public Instruction shall be secretary of the Board of Education."

Cited in In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

§ 9. **Powers and duties of the board.**—The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the textbooks 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. (Const. 1868; 1941, c. 151.)

Editor's Note.—Pursuant to c. 151 of the Public Laws of 1941, the former §§ 10, 11, 12, and 13 of the Constitution of 1868 were repealed and the present § 9 substituted in lieu thereof. Those former sections read as follows:

"§ 10. The Board of Education shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the State; but all acts, rules and regulations of said board may be altered, amended, or repealed by the General Assembly, and when so altered, amended, or repealed they shall not be re-enacted by the board.

"§ 11. The first session of the Board of Education shall be held at the capital of the State within fifteen days after the organization of the State government under this Constitution; the time of future meetings may be determined by the board.

"§ 12. A majority of the board shall constitute a quorum for the transaction of business.

"§ 13. The contingent expenses of the board shall be provided by the General Assembly."

§ **10. Agricultural department.**—As soon as practicable after the adoption of this Constitution, the General Assembly shall establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining, and of normal instruction. (Const. 1868; 1941, c. 151.)

Editor's Note.—This section, formerly § 14 of Art. IX of the Constitution of 1868, was renumbered to become § 10 pursuant to c. 151 of the Public Laws of 1941.

The Board a Department of State Government.—The Board of Agriculture is a department of the State government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be sued in that respect. Chemical Co. v. Board, 111 N. C. 135, 15 S. E. 1032 (1892).

Levy of Tax for Farm Agent's Salary.—The encouragement of agriculture is a fundamental objective of the State government, and a levy of a tax by a county to pay the county farm agent's salary is for a special purpose having the special approval of the legislature, within the meaning of Art. V, § 6, for which a tax in excess of the 15-cent limitation may be imposed. Nantahala Power, etc., Co. v. Clay County, 213 N. C. 698, 197 S. E. 603 (1938).

§ **11. Children must attend school.**—The General Assembly is hereby empowered to enact that every child, of sufficient mental and physical ability, shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means. (Const. 1868; 1941, c. 151.)

Editor's Note.—This section, formerly § 15 of Art. IX of the Constitution of 1868, was renumbered to become § 11, pursuant to c. 151 of the Public Laws of 1941.

Applied in State v. Wolf, 145 N. C. 440, 59 S. E. 40 (1907).

ARTICLE X

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. (Const. 1868.)

Editor's Note. — It is thought more proper to place the main annotations regarding the homestead and personal property exemptions under §§ 1-369 et seq. The notes placed thereunder together with the references compose a comprehensive treatment of the subject — reference to which is here made. The note found under this section is meant to embrace only direct construction of the provisions here-

of, and may be of aid to the practitioner in dealing with the sections above mentioned.

Section Liberally Construed. — Hyman v. Stern, 43 F. (2d) 666 (1930).

The Marital Duty of Husband.—The husband's duty to protect and provide for his wife is more than a debt in its ordinary acceptation of the word, or within the contemplation of this and the following section of the Constitution. Anderson v. Anderson, 183 N. C. 139, 110 S. E. 863 (1922).

A husband's obligation to support his wife during the existence of the marital relation is not a "debt" within the meaning of this and the following section of the Constitution. Barber v. Barber, 217 N. C. 422, 8 S. E. (2d) 204 (1940), citing White v. White, 179 N. C. 592, 103 S. E. 216 (1920).

A Constitutional Right.—The right to the personal property exemption exists not by virtue of the allotment, but by virtue of the Constitution which confers it and attaches the protection to the debtor before the allotment or appraisal. Lockhart v. Bear, 117 N. C. 298, 23 S. E. 484 (1895). See Crow v. Morgan, 210 N. C. 153, 185 S. E. 668 (1936).

This and the following section are explicit in guaranteeing to every resident of the State his homestead and personal property exemption of the value fixed—"to be selected by the owner thereof." McKeithen v. Blue, 142 N. C. 360, 55 S. E. 285 (1906).

Meaning of "Final Process."—A debtor may legally demand his personal property exemption at any time and to the last moment before the appropriation thereof by the court, and the order of court directing a payment of the money derived from the sale of such property is final process within the meaning of the Constitution, giving the creditor such right until execution or other final process. Befarrah v. Spell, 178 N. C. 231, 100 S. E. 321 (1919).

Diminution in Value of Property.—In the well considered opinion in Campbell v White, 95 N. C. 344 (1886), it was said: "Though the debtor's personal property exemption has been duly allotted, whenever it has been diminished by use, loss, or other cause, he has a right to have any other personal property he may have exempted up to the prescribed limit," Smith, C. J., saying that this section of the Constitution, is a continual mandate to the officer to leave so much of the debtor's personal estate untouched for his use, and, of course, the diminution from use, loss, or other cause must be replenished with other, if the debtor has such, up to the prescribed limits. It is plainly meant that when any final process against the debtor's estate is to be enforced, that much of his estate must be allowed to remain with him as not liable to sale. Gardner v. McConnaughey, 157 N. C. 481, 73 S. E. 125 (1911).

Set-Off.—A party may not demand that his claim be allowed him as his personal property exemption so as to defeat the adverse party's right of counterclaim or set-off prior to the rendition of the final judgment on his claim, since to permit the party to assert the exemption before judgment would enable him to obtain judgment in instances in which, if a balance were struck, nothing would be due him. Edgerton v. Johnson, 218 N. C. 300, 10 S. E. (2d) 918 (1940). For note on this case, see 19 N. C. Law Rev. 227.

Plaintiff moved that the judgment rendered against him in this cause on defendant's counterclaim should be offset by a judgment subsequently obtained by plaintiff against defendant in a separate action, contending that defendant is insolvent. Defendant demanded that the judgment rendered in his favor upon the counterclaim in this cause be allowed to him as his personal property exemption. Held: To allow offset would amount to "final process" within the meaning of this section, and defendant's demand that the judgment in his favor on the counterclaim be allowed him as his personal property exemption precludes plaintiff's right of offset. Edgerton v. Johnson, 218 N. C. 300, 10 S. E. (2d) 918 (1940).

Exemption Ceases at Death of Claimant. — The personal property exemption provided for by this section and the laws passed pursuant thereto, exists only during the life of the homesteader and after his death passes to his personal representative, to be disposed of in a due course of administration. Johnson v. Cross, 66 N. C. 167 (1872).

It is to be noted that by §§ 3 and 5, after the death of the owner of a homestead, the exemption is continued on for the benefit of his children or widow; but there is no such provision in regard to the "personal property exemption."—Ed. Note.

Forfeiture of Exemption.—A bankrupt who conceals assets exceeding in value his statutory exemption forfeits his right to such exemption. Hyman v. Stern, 43 F. (2d) 666 (1930).

One who is a fugitive from justice, though leaving his family here, who can-

not be found in the State and whose whereabouts are unknown, and the object of whose absence is to avoid serving a criminal sentence imposed by our courts, is not a resident of the State within the meaning of this section, of our Constitution, and not entitled to his exemptions here in the absence of evidence or finding on the question of his animus revertendi. Cromer v. Self, 149 N. C. 164, 62 S. E. 885, 128 Am. St. Rep. 658 (1908).

Debtor Entitled to Exemption at All Times.—The five hundred dollar personal property exemption prescribed by this section of the Constitution entitles a judgment debtor to the amount of the exemption at all times, and such sum may be set apart for the comfort and support of the judgment debtor as often as the judgment debtor may be pressed with execution. Commissioner of Banks v. Yelverton, 204 N. C. 441, 168 S. E. 505 (1933), commented on in 12 N. C. Law Rev. 65.

A debtor may legally demand his personal property exemption at any time and to the last moment before the appropriation thereof by the court, and the order of court directing a payment of the money derived from the sale of such property is final process within the meaning of the Constitution giving the creditor such right until execution or other final process. Crow v. Morgan, 210 N. C. 153, 185 S. E. 668 (1936).

Cited in Carpenter v. Duke, 144 N. C. 291, 56 S. E. 938 (1907).

§ 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 dwelling 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. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for the purchase of said premises. (Const. 1868.)

Cross Reference.—See §§ 1-369 et seq. and notes placed thereunder.

A Constitutional Right.—The right to a homestead is guaranteed by the Constitution. Williams v. Johnson, 230 N. C. 338, 53 S. E. (2d) 277 (1949).

Homestead and Personal Property Exemptions Distinguished.—The homestead exemption is permanent unless there is a reallotment by reason of an increase in value in the manner provided by § 1-373. But the personal property exemption is to be reassigned, whenever, at subsequent dates, executions are levied. The reason is that the realty is fixed and stable, whereas the articles of personal property may be increased or diminished in quantity, between the levy of executions. Gardner v. McConnaughey, 157 N. C. 481, 73 S. E. 125 (1911).

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 (1932).

The right to claim homestead may be lost by failure to assert it in apt time, by waiver, or by estoppel. Cameron v. McDonald, 216 N. C. 712, 6 S. E. (2d) 497 (1940).

Homestead is a right created for the benefit of the judgment debtor, and therefore other judgment creditors cannot complain of a waiver by the debtor of this right in designated realty as to a particular judgment. North Carolina Joint Stock Land Bank v. Bland, 231 N. C. 26, 56 S. E. (2d) 30 (1949).

A written request by judgment debtors to the sheriff to sell lands under execution without the allotment of homestead to the end that the property might bring the highest price possible, and the joinder of the judgment debtors in the sheriff's deed to the purchaser, constitute an authorization and ratification of the act of the sheriff in making the execution sale without allotment of homestead and is a valid waiver by the judgment debtors of their homestead exemption in regard to that particular execution. North Carolina Joint Stock Land Bank v. Bland, 231 N. C. 26, 56 S. E. (2d) 30 (1949).

Right May Be Sold or Assigned.—The homestead right or estate is salable or assignable, and the purchaser can hold the land to which it pertains to the exclusion of judgment creditors during its existence. Gardner v. Batts, 114 N. C. 496, 19 S. E. 794 (1894). As to requisites of deed, see Art. X, § 8, and note thereto.

Where there is a homestead right in land, the homesteader may alienate the same only with the joinder and private examination of the wife. Farris v. Hendricks, 196 N. C. 439, 146 S. E. 73 (1929).

The owner of lands loses his right to a homestead therein allowed by this section upon his conveying the title to the same, by deed, though he may select a homestead thereafter in other of his lands under the provisions of § 1-370. Duplin County v. Harrell, 195 N. C. 445, 142 S. E. 481 (1928).

Only Residents Entitled to Homestead. —Evidence held insufficient to support finding by the court that judgment debtor is resident and entitled to homestead. Scott & Co. v. Jones, 230 N. C. 74, 52 S. E. (2d) 219 (1949).

Duration of Homestead. — The homestead as allowed lasts during the life of the owner thereof; and, after his death, it lasts during the minority of his children, or any one of them, and the widowhood of his widow, unless she be the owner of a homestead in her own right. Williams v. Johnson, 230 N. C. 338, 53 S. E. (2d) 277 (1949).

Presumption of Continuance.—Once acquired the homestead is presumed to continue. Williams v. Johnson, 230 N. C. 338, 53 S. E. (2d) 277 (1949).

Allotment Unnecessary. — The title to the homestead is vested in the owner by the Constitution of this State, and no allotment by the sheriff is necessary to vest the title thereto. The allotment by the sheriff is only for the purpose of ascertaining whether there be an excess of property over the homestead which is subject to execution. Lambert v. Kinnery, 74 N. C. 348 (1876). See note to § 1-369.

Land must be selected by the owner and allotted before it becomes exempt. It must also be both owned and occupied by the homesteader, and this at the time of issuance of the execution. Chadbourn Sash, etc., Co. v. Parker, 153 N. C. 130, 69 S. E. 1 (1910).

Where a judgment debtor is present when his homestead in his land is laid off to him by the appraisers and designates the land he desires for the purpose, he may not successfully contend thereafter that other lands should have been included, it not being contended that the value of the homestead as allotted was less than one thousand dollars. Citizens' Bank v. Robinson, 201 N. C. 796, 161 S. E. 487 (1931).

Where a mortgage on land is foreclosed and the land brings at the foreclosure sale a sum more than sufficient to pay the mortgage debt, the surplus remaining to the constitutional limit of one thousand dollars is to be regarded as realty to which the homestead right attaches when the same has not been waived. Farris v. Hendricks, 196 N. C. 439, 146 S. E. 73 (1929).

A mortgagor of lands is entitled to his homestead exemption in his equity of redemption as against the liens of judgment creditors, and an injunction will lie against the sale of the property under execution when his homestead has not been allotted. Cheek v. Walden, 195 N. C. 752, 143 S. E. 465 (1928).

There is no lien for purchase money in North Carolina, and while the judgment debtor cannot claim homestead as against a judgment for purchase money, the lien of a mortgage executed to a third person has priority over the judgment lien, when the mortgage is executed prior to the rendition of the judgment and prior to an amendment putting the title to the property in issue. Jarrett v. Holland, 213 N. C. 428, 196 S. E. 314 (1938)

A duly docketed judgment is a lien on the lands of the judgment debtor but is subject to the homestead interest in the lands as provided by this section. Farris v. Hendricks, 196 N. C. 439, 146 S. E. 73 (1929).

The only way property may lose its homestead character, after the homestead has been allotted, is by death, abandonment or alienation. Williams v. Johnson, 230 N. C. 338, 53 S. E. (2d) 277 (1949).

Homestead interest in land is terminated by the owner's removal from the State. Scott & Co. v. Jones, 230 N. C. 74, 52 S. E. (2d) 219 (1949).

The right to the homestead exemption is not forfeited by a fraudulent conveyance, and the judgment was properly modified by order directing that defendant be allotted his homestead in the land which should be exempt from sale by the commissioner. New Amsterdam Cas. Co. v. Dunn, 209 N. C. 736, 184 S. E. 488 (1936).

Exemption Allowed in Mortgaged Lands. —A debtor may have his homestead exemption allotted in lands owned by him but mortgaged to a third person, but in ascertaining the value thereof the mortgage debt should be disregarded, and the land appraised as though the debtor owned the unencumbered fee. Crow v. Morgan, 210 N. C. 153, 185 S. E. 668 (1936).

Or Vacant Lots.—Where the only real property owned by a judgment debtor consists of vacant lots, he may claim his homestead therein, since he may thereafter build an habitable structure thereon. Equitable Life Assur. Soc. v. Russos, 210 N. C. 121, 185 S. E. 632 (1936).

Quoted in Simmons v. Respass, 151 N.

C. 5, 65 S. E. 516, 134 Am St. Rep. 961 (1909).

Cited in Vannoy v. Green, 206 N. C. 77, 173 S. E. 277 (1934); Sample v. Jackson, 225 N. C. 380, 35 S. E. (2d) 236 (1945).

§ **3. Homestead exemption 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. (Const. 1868.)

Cross Reference.—See Editor's Note to § 5.

Only Infant Children Included. — An heir twenty-one years old is not entitled to homestead in the lands of his ancestor, his right thereto ceased as soon as he attained his majority. Saylor v. Powell, 90 N. C. 202 (1884).

The widow by a second marriage of one who died seized and possessed of land leaving no children by her, is not entitled to the benefit of a homestead therein, when he has left children by his first marriage, though they are adult. The meaning of the language of this section and § 5 is too plain for construction, that in speaking of children the instrument refers to children of the deceased owner. Simmons v. Respass, 151 N. C. 5, 65 S. E. 516 (1909).

Same — Where Only One Minor.— Where the owner of a homestead dies, leaving children, some of age and one a minor, the homestead estate vests alone in the minor child until his or her majority. Simpson v. Wallace, 83 N. C. 477 (1880).

Pecuniary Standing of Children Not Considered.—The right to a homestead is given to the minor children of an insolvent father, regardless of their pecuniary circumstances. Allen v. Shields, 72 N. C. 504 (1875); Spence v. Goodwin, 128 N. C. 273, 38 S. E. 859 (1901)

Right Not Waivable by Guardian Ad Litem.—A guardian ad litem cannot waive the homestead rights of infant heirs, especially when there is no consideration therefor, for such waiver would affect the substantial rights of the infants. Spence v. Goodwin, 128 N. C. 273, 38 S. E. 859 (1901).

Debts Contracted for Work and Labor. —By construing § 6 of this article in connection with this section the conclusion is sustained that for all debts contracted for work and labor done, a lien is given upon the property of a married woman. Ball v. Paquin, 140 N. C. 83, 52 S. E. 410, 3 L. R. A. (N. S.) 307 (1905).

The debt referred to in this section means the debt of the owner of the homestead, and not the debt of the infant children. Bruton v. McRae, 125 N. C. 206, 34 S. E. 397 (1899).

Right Not to Be Sold for Assets.—In a proceeding to sell land for assets, the executor cannot sell the homestead interest of a minor child and devisee of the testator. Bruton v. McRae, 125 N. C. 206, 34 S. E. 397 (1899).

Cited in Narron v. Musgrave, 236 N. C. 388, 73 S. E. (2d) 6 (1952).

§ **4. Laborer's lien.**—The provisions of section one and two of this article shall not be so construed as 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. (Const. 1868.)

Cross References.—See §§ 44-1 et seq. and notes thereto. For other exceptions to the exemptions, see note of Mebane v. Layton, 89 N. C. 396 (1883), under § 1-369.

Definition of Terms.—A "laborer's lien" is solely for labor performed, while a "mechanic's lien" is broader and includes the "work done," i. e., the "building built" or superstructure put on the premises. Broyhill v. Gaither, 119 N. C. 443, 26 S. E. 31 (1896).

Lien for Materials Furnished.—See note of Cumming v. Bloodworth, 87 N. C. 83 (1882), under § 44-1. See also, Broyhill v Gaither, 119 N. C. 443, 26 S. E. 31 (1896).

Applied in McMillan v. Williams, 109 N. C. 252, 13 S. E. 764 (1891); Isler v. Dixon, 140 N. C. 529, 53 S. E. 348 (1906); Sugg v. Pollard, 184 N. C. 494, 115 S. E. 153 (1922).

Quoted in Roper Lumber Co. v. Lawson, 195 N. C. 840, 143 S. E 847 (1928).

§ **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. (Const. 1868.)

Cross Reference.—See § 1-369, analysis line "Who Entitled to Homestead and Exemptions," II, B. As to allotment after death of homesteader, see § 1-389

and notes thereto; as to right of widow whose deceased husband leaves adult children by a former marriage, see note of Simmons v. Respass, 151 N. C. 5, 65 S. E. 516 (1909), under § 3 of this article.

Editor's Note.—It is to be noted that the widow's right to the homestead provided for by this section is expressly conditioned upon her not being the owner of a homestead in her own right. Such a clause is not contained in § 3 which gives the right to the children during minority. On this point it was said in Spence v. Goodwin, 128 N. C. 273, 38 S. E. 859 (1901): "This ———— emphasizes by direct implication the unconditional right of exemption given to the children by § 3."

Ownership at Death Essential.—It is only in the contingency that the husband is the owner of a homestead at the time of his death that the exemption from debts inures to her benefit. Thomas v. Bunch, 158 N. C. 175, 73 S. E. 899 (1912).

A widow is not required to take action for the preservation of the right to a homestead in the lands of her deceased husband under the provisions of this section, and before the land can be validly sold by the personal representatives to make assets for payment of the debts of the deceased the homestead must first be assigned. Fulp v. Brown, 153 N. C. 531, 69 S. E. 612 (1910).

Heirs Prior to Widow Where There Are No Creditors.—A widow is not entitled to homestead against the heirs at law where there are no creditors, but only to dower. Caudle v. Morris, 160 N. C. 168, 76 S. E. 17 (1912). See also, Tucker v. Tucker, 103 N. C. 170, 9 S. E. 299 (1889).

Cited in Pence v. Price, 211 N. C. 707, 192 S. E. 99 (1937).

§ 6. Property of married women secured to them.—The real and personal property of any female 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 female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. (Const. 1868.)

Cross Reference.—See notes to § 52-1.

Editor's Note.—To give effect to the provisions of the organic law as embodied in this section, the legislature from time to time has enacted statutes whose essence may be boiled down in substance to what is contained in this section. In fact some of those statutes are a verbatim confirmation of these provisions, while others are corollaries thereof deducible by necessary inference from those provisions through judicial construction.

For example § 39-7 et seq. deals with the execution and proof of instruments affecting a married woman's title to her property; § 52-1, secures to her all property acquired before and after marriage as her separate estate free from the claims of her husband; § 52-2 authorizes her to contract, with certain qualifications, as if she were unmarried, §§ 31-2, 52-1, 52-8, empower her to dispose of her property by will, and there are many other sections in the Code which are directly or indirectly offsprings of, or satellites to, this section.

By virtue of the community of source of these statutes, the instances are rare where this constitutional section has been construed apart from its satellites, or where the construction placed upon the latter is not applicable to the former, or vice versa. These constructions have been placed under the respective subordinate sections to which they refer, and all of them radiate a light upon the provisions of the organic law contained in this section. To the end that repetition may be avoided the counsel is urged to refer to those sections for no less direct constructions of this section than the sections under which they are placed, while he will find hereunder the more or less independent constructions of this section which do not appear under its subordinates.

For note on wife's conveyance of her realty by virtue of husband's power of attorney, see 31 N. C. Law Rev. 228.

In General.—There is no "beneficent provision of the Constitution" which throws additional shackles around women in the management of their separate property. The provision of the Constitution is in exactly the opposite direction, in accordance with the free spirit of the age and with the universal trend of legislation the world over. Its purpose is not to further assimilate married women to the condition of infants, but to make free women of them, to emancipate them from most of the restrictions formerly existing. Strouse

v. Cohen, 113 N. C. 349, 18 S. E. 323 (1893).

General Policy of Section.—This section is intended to emancipate married women and place them, so far as property rights are concerned, on a par with men and femes sole. McLeod v. Williams, 122 N. C. 451, 30 S. E. 129 (1898).

Common-Law Rule Changed. — The common-law rule giving to the husband the actual or potential ownership of the separate choses in action belonging to his wife by reducing them into possession is now changed by this section giving to the wife the sole ownership of her separate estate. Turlington v. Lucas, 186 N. C. 283, 119 S. E. 366 (1923).

In Etheredge v. Cochran, 196 N. C. 681, 146 S. E. 711 (1929), referring to this section, it is said by Adams, J.: "By virtue of these and other provisions the relation which married women formerly sustained to their husbands has been materially modified. Unity of person in the strict common-law sense no longer exists, and many of the common-law disabilities have been removed. Not only may they contract with each other; a married woman may now sue her husband in contract or in tort. Dorsett v. Dorsett, 183 N. C. 354, 111 S. E. 541, 23 A. L. R. 15 (1922); Roberts v. Roberts, 185 N. C. 566, 118 S. E. 9, 29 A. L. R. 1479 (1923)." Shirley v. Ayers, 201 N. C. 51, 158 S. E. 840 (1931).

Husband's Consent Necessary Only in Conveyances.—Under this section a married woman may dispose of her property by gift or otherwise without the assent of her husband, unless the law requires the disposition of it to be evidenced by a conveyance or a writing. Vann v. Edwards, 135 N. C. 661, 47 S. E. 784 (1904). See Martin v. Bundy, 212 N. C. 437, 193 S. E. 831 (1937).

The purpose of requiring the written assent is to afford the wife the counsel and protection of her husband, and not to convey any estate in the realty. When he signs it under her signature and then acknowledges the execution of the deed as one of the grantors, but one inference can arise, and that is that he was giving his required written assent to her conveyance. Joiner v. Firemen's Ins. Co., 6 F. Supp. 103 (1934).

Sufficiency of Husband's Written Assent.—Since the deed of the husband conveys no title to his wife's land, but evidences his written assent to her conveyance, upon reason and authority, subscribing his name under seal to her deed, and acknowledging his execution thereof as required by law, is a sufficient written assent to make her deed valid. Joiner v. Firemen's Ins. Co., 6 F. Supp. 103 (1934).

Wife May Not Convey Real Estate by Estoppel.—By this section and the laws of this State a married woman is incapable of making a valid conveyance of her real estate without the written assent of her husband and privy examination duly taken and certified. Hence, she may not convey it by estoppel, fraudulently divest herself of coverture, if such characterization be preferred. Buford v. Mochy, 224 N. C. 235, 29 S. E. (2d) 729 (1944).

In view of the above holding it would seem that the power of a married woman to effect a conveyance of her real property by estoppel in pais is delimited by this section of the Constitution. Merchants, etc., Bank v. Sherrill, 231 N. C. 731, 58 S. E. (2d) 741 (1950).

The renunciation of a will is not a conveyance which requires the written assent of the husband, as provided in this section. Perkins v. Isley, 224 N. C. 793, 32 S. E. (2d) 588 (1945).

No Formal Conveyance to Transfer Note or Bond.—No formal conveyance is necessary under the requirement of this section of the Constitution in the transfer of a note or bond. The delivery of the note or bond to the endorsee after it has been endorsed in blank by the wife, the owner, and the husband, is a sufficient conveyance of the note or bond to satisfy the constitutional requirement. Coffin v. Smith, 128 N. C. 252, 38 S. E. 864 (1901).

Legislative Power to Declare Wife Free Trader.—There is no constitutional inhibition on the power of the legislature to declare where and how the wife may become a free trader, this section being intended to protect instead of disabling her. Hall v. Walker, 118 N. C. 377, 24 S. E. 6 (1896).

A married woman who has been abandoned by her husband is a free trader, and she may execute a valid conveyance of her lands without his joinder. Nichols v. York, 219 N. C. 262, 13 S. E. (2d) 565 (1941).

Legislative Control over Capacity to Make Will.—This section conferring upon married women the right to make a will, etc., "as if she were unmarried," was designed chiefly to remove the common-law restriction on married women in this respect, and was not intended to free such right from every and all legislative regulation. Flanner v. Flanner, 160 N. C. 126, 75 S. E. 936 (1912).

May Devise or Bequeath Property as

if Sole.—Under the provisions of this section, and as later declared by our statutes, a married woman may now devise and bequeath her separate real and personal property as if she were a feme sole, which does not apply to a conveyance of her realty by deed. Freeman v. Lide, 176 N. C. 434, 97 S. E. 402 (1918).

Liability of Husband for Rents Paid Wife after Foreclosure.—Where lands belonging to the separate estate of a wife have been foreclosed under a deed of trust thereon duly executed, and after such foreclosure the rents from the land are paid to the wife, the husband may not be held responsible for such rents by the person entitled to the rent by virtue of the foreclosure, since, under this section a wife is given sole ownership of her separate estate. In re Longley, 205 N. C. 488, 171 S. E. 788 (1933).

May Bar Husband's Curtesy by Devising the Property.—By marriage, before the adoption of the Constitution of 1868, the husband acquired no vested rights in the lands of his wife before a child was born capable of inheriting; and when the first child born of the marriage was after the adoption of the Constitution, which gives a married woman the power, among other things, of disposing, by will, of her property acquired before marriage, she may accordingly dispose of it by will and deprive him of his interest therein as tenant by the curtesy. Richardson v. Richardson, 150 N. C. 549, 64 S. E. 510 (1909).

Where a feme covert dies intestate her husband is entitled to his common-law right of curtesy; where she devises her land, under this section, the estate of curtesy is destroyed. Tiddy v. Graves, 126 N. C. 620, 36 S. E. 127 (1900).

Vested curtesy rights of the husband at the time of the adoption of the Constitution were not impaired by this section. Richardson v. Richardson, 150 N. C. 549, 64 S. E. 510 (1909).

Devise of Equitable Separate Estate.—She may devise her equitable separate estate, in the absence of contrary provisions in the instrument creating it, where the trustee is a passive trustee; and, whether the trust be passive or active, where the trust is to terminate with her life, and the estate to become absolute thereafter. Freeman v. Lide, 176 N. C. 434, 97 S. E. 402 (1918).

Same—Provisions of Instrument Creating the Estate Still Controls.—Married women have no greater estates, by operation of this section of the Constitution, than those conveyed by the terms of the deed under which they derive title; nor are the properties and incidents belonging to estates changed by that instrument. Long v. Barnes, 87 N. C. 329 (1882).

The Constitution imposes no limitation upon the right of a grantor or devisor to restrict or enlarge, by the terms of the instrument through which title passes, her jus disponendi. Kirby v. Boyette, 118 N. C. 244, 24 S. E. 18 (1896).

Not Applicable to Obligations of Wife as Surety to Her Husband.—This section, providing that the separate property of the wife shall not be liable for the debts of the husband, has no application to the obligation of the wife as surety of her husband, such obligation being regarded as a direct one between the creditor and herself. Royal v. Southerland, 168 N. C. 405, 84 S. E. 708 (1915).

Extent of Veto Power of Husband.—The veto power of the husband does not extend to devises and bequests, nor to any other disposition of her property, save in those cases which under the law must be made by a "conveyance," i. e., deeds and mortgages of realty and such mortgages of personalty as are made by deed. To hold that the husband's veto power, by reason of the requirement of his written assent, extends to all gifts, sales, transfers and assignments of her personal property, oral or written, is to make the veto as broad as the enfranchisement. It is to say that her property shall remain hers, as before marriage, but that in no case whatever shall she own it as if she had remained single. It would be to require the husband's written assent in cases where no writing would be necessary on the part of the wife. Jennings v. Hinton, 126 N. C. 48, 35 S. E. 187 (1900).

Estates by entireties as between husband and wife still exist in North Carolina, but where there is a judgment upon a joint contract against husband and wife, a lien thereunder is created against lands held by them in entireties, and execution may be issued against them. Martin v. Lewis, 187 N. C. 473, 122 S. E. 180 (1924).

Action for Tort.—The husband cannot sue to recover his wife's earnings, or damages for torts committed on her, and there is no reason why she can sue for torts or injuries inflicted on her husband. The law has never authorized the wife to maintain such action for torts sustained by the husband. If the husband could maintain an action to recover damages for torts on the wife she would be able to maintain an action on account of torts sustained by the husband. Such right of action if it existed in favor of the husband should exist in favor of the wife. It should be in favor of

both, or neither, but in view of the Constitution of 1868 and our statute on the subject, such action cannot be maintained by either on account of the injury to the other. Hipp v. Dupont, 182 N. C. 9, 108 S. E. 318 (1921).

The right of a married woman to maintain an action against her husband to recover for negligent injury is not limited to residents of this State, but a nonresident wife may maintain an action here against her nonresident husband on a transitory cause of action which arises in this State, and she is entitled to any recovery as her separate property. Bogen v. Bogen, 219 N. C. 51, 12 S. E. (2d) 649 (1941).

Statute providing that earnings and damages from personal injury are wife's property (G. S. § 52-10) should be read in the light of this section. Helmstetler v. Duke Power Co., 224 N. C. 821, 32 S. E. (2d) 611 (1945).

Power to Contract by Virtue of This Section.—Where it was contended that when the Constitution gave married women separate estates in their property, it gave them by a necessary implication an unrestricted dominion over the property, to bind it directly or indirectly, except when expressly forbidden, and an unrestricted right to contract, such as a feme sole or a man has, it was held that there was no such grant implied, that the terms "sole and separate estate" had a known and definite meaning in the law when the Constitution was framed, and that it must be taken that they were used in that instrument in the sense which had been affixed to them by prior decisions of the court. Pippen v. Wesson, 74 N. C. 437 (1876). But this power is now expressly accorded to married women by the terms of statute known as Martin Act embodied in § 52-2.—Ed. Note.

Husband a Freeholder Where Wife Owns Land and There Are Children.—In Hodgin v. Southern R. Co., 143 N. C. 93, 55 S. E. 413 (1906), it is said by Brown, J.: "One of the jurors was challenged by defendant upon the ground that he was not a freeholder. The challenge was allowed and plaintiff excepted. The juror owned no land, but his wife was seized of a fee and had children by her husband. While the Constitution, Art. X, § 6 [this section], has wrought very material and far-reaching changes as to the rights and dominion of the wife over her separate property, it seems, nevertheless, to have been held by this court that the husband still has what is termed an "interest" in her land which constitutes him technically a freeholder." State v. Avant, 202 N. C. 680, 163 S. E. 806 (1932).

Prohibitions of § 52-5, Not Inhibited by This Section.—The provisions of § 52-5, dispensing with the necessity of the written consent of the husband to the conveyance by the wife of her lands when he has "been declared an idiot or a lunatic" is not inhibited by this section of the Constitution. Lancaster v. Lancaster, 178 N. C. 22, 100 S. E. 120 (1919).

Conveyance by Submitting Title to Arbitrators.—If a married woman could dispose of her real estate, without the joinder of her husband, by submitting her title to arbitrators, that part of this section which ordains that a married woman, with the written assent of her husband, may convey her real estate, would be a dead letter. If such were the law, married women, from design or by means of fraud and deceit, might by arbitrators, be deprived of their real estate and the husband deprived of his rights therein before he had knowledge of the matter, or the power to prevent it in either case. If a married woman could dispose of her real estate through arbitration, she would be enabled by an indirect method to do that which the Constitution and the laws prohibit, and that will never be allowed. Smith v. Bruton, 137 N. C. 79, 49 S. E. 64 (1904).

Conveyances between Husband and Wife.—A deed executed by husband to wife in 1841, even if a fee simple deed, would have been void in law, and sustainable in equity only upon meritorious consideration; it is otherwise, as to such deed executed now, which is rendered valid under this section. McLamb v. McPhail, 126 N. C. 218, 35 S. E. 426 (1900).

Assignment of Insurance Policy.—The signature of the husband, as witness, to a written assignment by the wife, of her interest in an insurance policy on his life, taken out by him for her benefit, is equivalent to an assignment by the wife, "with the written assent of her husband," as provided by this section. Jennings v. Hinton, 126 N. C. 48, 35 S. E. 187 (1900).

Estates by entireties are not changed or affected by this section of the Constitution as to rights of married women. Moore v. Shore, 208 N. C. 446, 181 S. E. 275 (1935), citing Bank of Greenville v. Gornto, 161 N. C. 341, 77 S. E. 222 (1913).

The husband has the right, during coverture, to deal with the possession of land held by him and his wife by entireties without the consent of the wife, but neither may make a contract affecting title so as to defeat the right of the survivor in the whole estate without the consent of the

other. Moore v. Shore, 208 N. C. 446, 181 S. E. 275 (1935).

Where lots are conveyed with restrictive covenants limiting buildings to residences and one of such lots is owned by a husband and wife by the entireties, the husband may not convey or contract in respect to the negative easement of such lot over the other lots without the consent of his wife, since the wife has the right to such negative easement as a part of the estate if she should survive her husband. Moore v. Shore, 208 N. C. 446, 181 S. E. 275 (1935).

§ 7. Husband may insure his life for the benefit of wife and children.—The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband the amount thus insured shall be paid over to the wife and children, or to the guardian, if under age, for her or their own use, free from all the claims of the representatives of her husband, or any of his creditors. And the policy shall not be subject to claims of creditors of the insured during the life of the insured, if the insurance issued is for the sole use and benefit of the wife and/or children. (Const. 1868; 1931, c. 262.)

Editor's Note.—The amendment proposed by Public Laws of 1931, c. 262, and ratified at the next succeeding general election, added the second sentence to this section.

Generally.—This section clearly looks to the provision for the wife and children so that they may not be left destitute by the death of an insolvent husband and father, and is personal to them when they survive. Hooker v. Sugg, 102 N. C. 115, 8 S. E. 919 (1889).

The purpose is to enable the husband to make valuable provision for his wife and children after his death, above, beyond and unaffected by his estate, personal and real, and the conditions of the same remaining at the time of his death. Burwell v. Snow, 107 N. C. 82, 11 S. E. 1090 (1890).

Not a Part of Insured's Estate.—Where a life insurance policy is issued to one in the name and for the benefit of the wife and children it does not upon his death become a part of his estate. Burton v. Farinholt, 86 N. C. 260 (1882). See also the discussion of this point contained in Herring v. Sutton, 129 N. C. 107, 39 S. E. 772 (1901) (dis. op.).

Under this section the proceeds from the insurance policy payable to the wife and children is not a part of the insured's estate so that it may be claimed by an heir or next of kin. Burwell v. Snow, 107 N. C. 82, 11 S. E. 1090 (1890).

This section "means, in the absence of fraud, that payment of premiums, ever 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 (1925), reversing In re Pittman, 275 F. 686 (1921).

"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 (1925), reversing In re Pittman, 275 F. 686 (1921).

"The legislature could not by statute add to the constitutional exemption. Wharton v. Taylor, 88 N. C. 230 (1883). 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 (1925), reversing In re Pittman, 275 F. 686 (1921).

If § 58-205 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 children as beneficiaries at the death of the husband. Whiting v. Squires, 6 F. (2d) 100 (1925), reversing In re Pittman, 275 F. 686 (1921).

"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 (1917); Cohn v. Malone, 248 U. S. 450, 39 S. Ct. 141, 63 L. Ed. 352 (1919). 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 (1905)." Whiting v. Squires, 6 F. (2d) 100 (1925), reversing In re Pittman, 275 F. 686 (1921).

Cited in Peoples Building & Loan Assn. v. Swaim, 198 N. C. 14, 150 S. E. 668 (1929); Russell v. Owen, 203 N. C. 262, 165 S. E. 687 (1932); In re Reiter, 58 F. (2d) 631 (1932).

§ 8. How deed for homestead may be made.—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 signature and acknowledgment of his wife. (Const. 1868; 1943, c. 662.)

Cross References.—See §§ 39-7 et seq. and notes thereto. As to form of private examination, see §§ 47-39, 47-40. See also note of Dalrymple v. Cole, 170 N. C. 102, 86 S. E. 988 (1915), under § 1-370.

Editor's Note. — This section was amended by vote at the general election of November 7, 1944.

Section Applies After Allotment of Homestead.—This section applies only to a conveyance of the homestead after it has been laid off. Mayho v. Cotton, 69 N. C. 289 (1873), approved in Dalrymple v. Cole, 170 N. C. 102, 86 S. E. 988 (1915). See also, Hager v. Nixon, 69 N. C. 108 (1873).

General Rule.—A deed executed by the homesteader without the joinder of his wife is invalid and passes no interest. Wittkowsky v. Gidney, 124 N. C. 437, 32 S. E. 731 (1899). See Lambert v. Kinnery, 74 N. C. 348 (1876).

Right of Grantee upon Non-Jointure of Wife.—Where a husband conveys his land without having his wife join in the deed, the grantee acquires the land free from the right of the wife to a homestead, unless the same has been laid off therein to the husband, but subject to the wife's right of dower, should she survive him. Dalrymple v. Cole, 170 N. C. 102, 86 S. E. 988 (1915) For other enumerated instances wherein the assent of the wife is not necessary, see note of Hughes v. Hodges, 102 N. C. 236, 9 S. E. 437 (1889), under § 39-9. See also, Dalrymple v. Cole, 156 N. C. 353, 72 S. E. 451 (1911); Simmons v. McCullin, 163 N. C. 409, 79 S. E. 625 (1913).

It will be seen that the provisions of this section do not become effective, and do not begin to operate until an allotment of the homestead is made to the husband. On this point the cases appear to be entirely in accord. A full discussion containing a minute detail of the reasons therefor may be found in Dalrymple v. Cole, 170 N. C. 102, 86 S. E. 988 (1915).

Jointure of Wife Unnecessary in Conveyance of Estate in Reversion.—A married woman has no interest or estate in the reversion which takes effect after a homestead estate; therefore the assent of the wife is not necessary to give validity to a deed of the husband conveying such estate in reversion. Jenkins v. Bobbitt, 77 N. C. 385 (1877).

This holding is based on the construction placed on this section which is to the effect that the assent of the wife is necessary to a disposition of the homestead estate, and does not embrace the reversion. —Ed. Note.

Same—Unnecessary as to Residue.—The general power of alienation incident to ordinary ownership of real property exists as to all the residue or remaining interest in the lands over the homestead exemption, whether the exemption has or has not been allotted, this section of the Constitution applying alone to the homestead interest, and none other. Davenport v. Fleming, 154 N. C. 291, 70 S. E. 472 (1911).

Land Acquired Prior to 1868.—The husband may convey land acquired before the Constitution of 1868 without the joinder of

the wife and thereby bar the wife of dower or homestead. Cawfield v. Owens, 129 N. C. 286, 40 S. E. 62 (1901).

Cited in Barrett v. Barrett, 120 N. C. 127, 26 S. E. 691 (1897); Boyd v. Brooks, 197 N. C. 644, 150 S. E. 178 (1929); Corporation Commission v. Transportation Committee, 198 N. C. 317, 151 S. E. 648 (1930); Pence v. Price, 211 N. C. 707, 192 S. E. 99 (1937).

ARTICLE XI

PUNISHMENTS, PENAL INSTITUTIONS, AND PUBLIC CHARITIES

§ **1. Punishments; convict labor; proviso.**—The following punishments only shall be known to the laws of this State, viz.: death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. The foregoing provision for imprisonment with hard labor shall be construed to authorize the employment of such convict labor on public works or highways, or other labor for public benefit, and the farming out thereof, where and in such manner as may be provided by law; but no convict shall be farmed out who has been sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson: Provided, that no convict whose labor may be farmed out shall be punished for any failure of duty as a laborer, except by a responsible officer of the State; but the convicts so farmed out shall be at all times under the supervision and control, as to their government and discipline, of the penitentiary board or some officer of this State. (Const. 1868; Convention 1875.)

Editor's Note.—All of this section after the first sentence was added by the Convention of 1875. This section of the Constitution constitutes the basis for the legislative enactments regulating the punishment of violation of the criminal law found in the specific sections in the General Statutes. It sets definite boundaries beyond which the legislature, in the exercise of the power to prescribe the punishment for the various crimes, cannot transgress. The cases placed in the notes found under the specific sections in the chapter, "Crimes and Punishments," of the General Statutes, will necessarily throw some light on this section of the Constitution. This fact renders it needless to repeat, at this point, a citation of those cases, and it is only necessary to refer the counsel to the sections of the above-mentioned chapter.

For article on punishment for crime in North Carolina, see 17 N. C. Law Rev. 205.

Working Convicts—Section Not Basis of Disciplinary Rules. — This constitutional provision has no direct application to the discipline required in our jails and penitentiaries, for if so it would prevent solitary confinement, restriction of rations, and other reasonable punishments that are in customary use in prisons and penitentiaries. State v. Nipper, 166 N. C. 272, 81 S. E. 164 (1914). But officers are civilly and criminally liable for an abuse or oppression of the adopted regulations under which the convicts are kept. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Same—Regulations Must Be Reasonable. —Whether the prisoners are worked on the public road or kept in jail the regulations under which they must live must be reasonable. State v. Young, 138 N. C. 571, 50 S. E. 213 (1905).

Stated in State v. Burnett, 179 N. C. 735, 102 S. E. 711 (1920).

Cited in State v. Stansbury, 230 N. C. 589, 55 S. E. (2d) 185 (1949).

§ **2. Death punishment.**—The object of punishments 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. (Const. 1868.)

Cross References.—See Editor's Note to § 1 of this article. As to punishment for murder, see § 14-17 and note thereto; as to punishment for arson, see § 14-58 and note thereto; as to burning of buildings other than dwelling houses, see §§ 14-59 et seq., and notes thereto; as to punishment for burglary, see § 14-52 and note thereto; as to punishment for rape, see § 14-21 and note thereto.

Power of Legislature.—The punishment to be inflicted for any crime is left entirely to the General Assembly, which can in its discretion affix lesser punishments, even for the four crimes, mentioned in this section, which are now visited with capital punishment. State v. Lytle, 138 N. C. 738, 51 S. E. 66 (1905).

Under the discretionary power given by the Constitution, the legislature has di-

vided the crimes murder and burglary into two degrees and has affixed thereto the punishment for each enumerated offense. See specific cross references.—Ed. Note.

Applied to repeal portion of statute prescribing punishment of death for burning mill house, in State v. King, 69 N. C. 419 (1873).

§ 3. **Penitentiary.**—The General Assembly shall, at its first meeting, make provision for the erection and conduct of a State's prison or penitentiary, at some central and accessible point within the State. (Const. 1868.)

Legislative Duties.—This provision imposes upon the legislature the duty of attending to the details as to the erection of the necessary buildings, the purchase of such property, real and personal, as may be necessary for the uses of the prison; and also to form such regulations for the government and conduct of the prison as may seem proper. The officers or placement, their salaries and the distribution of their duties are all left with the General Assembly. State Prison v. Day, 124 N. C. 362, 32 S. E. 748 (1899).

As to appointment of the directors of the penitentiary and filling vacancies, see N. C. Const., Art. III, section 10.

Referred to in Railroad v. Holden, 63 N. C. 410 (1869); Sedberry v. Carver, 77 N. C. 319 (1877).

§ 4. **Houses of correction.**—The General Assembly may provide for the erection of houses of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed. (Const. 1868.)

Cross References.—See §§ 134-1 et seq. See also §§ 153-209 et seq.

Definition.—A house of correction, "as the name indicates, is designed for the reformation of youthful criminals, those who have not yet become hardened in crime." In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

§ 5. **Houses of refuge.**—A house or houses of refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders. (Const. 1868.)

§ 6. **The sexes to be separated.**—It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the State, the county jails, and city police prisons secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell. (Const. 1868.)

The word "superintendence," as used in this section, was intended to impose upon the governing officials of municipal corporations the duty of exercising ordinary care in procuring articles essential for the health and comfort of prisoners, and of overlooking their subordinates in immediate control of the prisoners, so far at least as to replenish the supply of necessary articles when notified that they are needed; and of employing such agents and appropriating such moneys as may be necessary to keep the prison in such condition as to secure the comfort and health of the inmates. Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

Liability of the City.—Under this section a city is liable in damages only for a failure to so construct its prison, or so provide it with fuel, bed-clothing, heating apparatus, attendance and other things necessary, as to secure to prisoners a reasonable degree of comfort, and protect them from such actual bodily suffering as would injure their health. If the aldermen of a city comply with the above requirements, the city is not liable in damages for sickness and suffering endured by a prisoner, and caused by the neglect of the jailer, policeman or attendants, to properly minister to his wants and necessities. Moffitt v. Asheville, 103 N. C. 237, 9 S. E. 695 (1889).

This section imposes liability on a municipality only for such injuries to prisoners as result from its failure to properly construct and furnish the prison to afford prisoners reasonable comfort and protection from suffering an injury to health. Parks v. Princeton, 217 N. C. 361, 8 S. E. (2d) 217 (1940). For note on this case, see 19 N. C. Law Rev. 101.

§ 7. **Provision for the poor and orphans.**—Beneficent provisions for the poor, the unfortunate and orphan, being one of the first duties of a civilized and Christian state, the General Assembly shall, at its first session, appoint and define the duties of a board of public charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report

to the Governor upon their condition, with suggestions for their improvement. (Const. 1868.)

Cross References. — As to corporate powers of a county generally, as exercised by the board of commissioners, see § 153-9; as to limitation on county indebtedness, see § 153-2; as to the corporate powers of a municipal corporation, see § 160-2; as to maintenance of the county poor, see § 153-152 and notes thereto; as to allowance of pensions, see § 153-157.

Editor's Note.—This section of the Constitution has been the source of numerous legislative enactments, some of the most important of which are referred to above. The notes placed under these sections of the General Statutes contain many cases which will throw an illuminating light on the substantive law embodied in this section of the Constitution. It is believed to be more helpful and beneficial to the practitioner to make reference to these specific sections of General Statutes, and the notes placed thereunder, where the constructions of the Code sections are given in connection with basic constitutional provisions, than to segregate them and leave it to the searcher to find the connecting links.

Erection of County Home — Issuing Bonds.—The building of a county home is for a class of citizens without a place of residence, and beneficent provision for whom is recommended by this section, "as one of the first duties of a civilized and Christian State"; therefore, providing for such a home being included in the idea of their support, a county may pledge its faith and credit and issue valid bonds for that purpose, as a necessary expense, without the approval of its voters. Commissioners v. Spitzer & Co., 173 N. C. 147, 91 S. E. 707 (1917).

Care of Indigent Sick Is Proper Function of State Government.—In accordance with express constitutional declaration of this section, the care of the indigent sick and afflicted poor is a proper function of the State government, and the General Assembly may by statute require the counties, as administrative agencies of the State, to perform this function, at least within their territorial limits. Martin v. Board of Com'rs, 208 N. C. 354, 180 S. E. 777 (1935).

There is no contractual duty on the part of the State to care for and maintain insane persons, the State hospitals being charitable institutions of the State, maintained voluntarily in recognition of Christian principles, as set out in this section. See §§ 143-120 et seq. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

Referred to in Board v. Commissioners, 113 N. C. 379, 18 S. E. 661 (1893); Board v. Commissioners, 137 N. C. 310, 49 S. E. 353 (1904).

§ 8. **Orphan houses.**—There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more orphan houses, where destitute orphans may be cared for, educated, and taught some business or trade. (Const. 1868.)

§ 9. **Inebriates and idiots.**—It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates. (Const. 1868.)

§ 10. **Deaf-mutes, blind, and insane.**—The General Assembly may provide that the indigent deaf-mute, blind, and insane of the State shall be cared for at the charge of the State. (Const. 1868; 1879, cc. 254, 268, 314.)

Cross References. — As to construction of the term "indigent," see note of In re Hybart, 119 N. C. 359, 25 S. E. 963, under § 122-38. See also, Hospital v. Fountain, 128 N. C. 23, 38 S. E. 34. As to statutory provision for indigent patients in hospital for the insane, see §§ 122-38 et seq.

Editor's Note. — This section was inserted, pursuant to cc. 254 and 314, Public Laws of 1879, in lieu of § 10 of the Constitution of 1868 which was as follows: "The General Assembly shall provide that all the deaf mutes, the blind, and the insane of the State, shall be cared for at the charge of the state."

Referred to in In re Boyett, 136 N. C. 415, 48 S. E. 789 (1904); State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

§ 11. **Self-supporting.**—It shall be steadily kept in view by the Legislature and the board of public charities that all penal and charitable institutions should

be made as nearly self-supporting as is consistent with the purposes of their creation. (Const. 1868.)

Cited in Palmer v. Haywood County, 212 N. C. 284, 193 S. E. 668, 113 A. L. R. 1195 (1937).

ARTICLE XII

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 averse to bearing arms, from religious scruples, shall be exempt therefrom. (Const. 1868.)

Stated in Hinton v. Lacy, 193 N. C. 496, 137 S. E. 669 (1927); In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

§ 2. **Organizing, etc.**—The General Assembly shall provide for the organizing, arming, equipping, and discipline of the militia, and for paying the same, when called into active service. (Const. 1868.)

Cross References. — For the numerous legislative enactments on the subjects, see the chapter "Militia", §§ 127-1 et seq. As to support of families of indigent militiamen, see § 153-157.

By Whom Militia Paid.—The legislature may provide, if it think proper to do so, how and by whom the militia shall be paid And in the absence of any special provision, they are to be paid by the State—the "power" that calls them out. Worth v. Commissioners, 118 N. C. 112, 24 S. E. 778 (1896). See § 127-80 and the note thereto.

Cited in Baker v. State, 200 N. C. 232, 156 S. E. 917 (1931).

§ 3. **Governor Commander-in-chief.**—The Governor shall be commander-in-chief and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasion. (Const. 1868.)

Governor May Call Out Militia.—In the absence of legislation, the Governor, as commander-in-chief, has the power to call out the militia, and the State guard being made a part of the militia, he has the power to call them out. This constitutional power may be regulated by legislation providing what shall amount to sufficient evidence of the existence of the causes mentioned in this section of the Constitution. Worth v. Commissioners, 118 N. C. 112, 24 S. E. 778 (1896).

Officers in the militia are liable to be called out to suppress riots or insurrection, "and to repel invasion." In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

Same—Not Subject to Legislative Restriction.—The legislature has no authority to restrict the power of the Governor to call out the militia. Worth v. Commissioners, 118 N. C. 112, 24 S. E. 778 (1896).

When Called into Service of United States.—See N. C. Const., Art. III, § 8.

§ 4. **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. (Const. 1868.)

ARTICLE XIII

Amendments

§ 1. **Convention, how called.**—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 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, at the next general election, 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. (Const. 1868; Convention 1875.)

Editor's Note.—The Convention of 1875 added the word "ever" after "shall" in line 2 and all of the section after the words "General Assembly" in the first sentence.

See 11 N. C. Law Rev., 242, for discussion as to whether the provisions of this section apply to the calling of a convention to consider a proposed federal amendment. This question was said to perplex the legislature and served to divide the Supreme Court.

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. 806, 172 S. E. 474 (1933).

§ 2. **How the Constitution may be altered.**—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. (Const. 1868; Convention 1875.)

Editor's Note.—Section 2 of the original Constitution of 1868, before it was amended by the Convention of 1875 to read as the present § 2, was as follows: "No part of the Constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in each House of the General Assembly and agreed to by three-fifths of the whole number of members of each House respectively; nor shall any alteration take place until the bill, so agreed to, shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly shall be agreed to, in the first session thereafter, by two-thirds of the whole representation in each House of the General Assembly, after the same shall have been read three times on three several days in each House, then the said General Assembly shall prescribe a mode by which the amendment or amendments may be submitted to the qualified voters of the House of Representatives throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters voting thereon have approved thereof, then, and not otherwise, the same shall become a part of the Constitution." Public Laws 1931, c. 104, proposed an amendment to this section, whereby the submission could be at a special election called for the purpose, which was defeated.

Generally.—While to amend the Constitution of the State it is necessary for the voters to approve the proposed amendments to be submitted to them, it is likewise necessary to the validity of the election that the legislature enact the proposition to amend into a statute by a three-fifths vote of each branch; and the constitutional provision that they be submitted "in such manner as may be prescribed by law" includes within its intent and meaning the time at which the amendments will be effective, if approved, the Constitution being silent on this point. Reade v. Durham, 173 N. C. 668, 91 S. E. 712 (1917). See also, Freeman v. Cook, 217 N. C. 63, 6 S. E. (2d) 894 (1940).

Applied in University v. McIver, 72 N. C. 76 (1875).

ARTICLE XIV

MISCELLANEOUS

§ 1. **Indictments.**—All indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon in the proper courts, but no punishment shall be inflicted which is forbidden by this Constitution. (Const. 1868.)

Cross References.—See §§ 15-140 to 15-155 and the notes thereto. As to punishments, see N. C. Const., Art. XI, §§ 1 et seq., and the references there made.

Cited in Debham v. Telephone Co., 126 N. C. 831, 36 S. E. 269 (1900).

§ 2. Penalty for fighting duel.—No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept, or knowingly carry a challenge therefor, or agree to go out of the State to fight a duel, shall hold any office in this State. (Const. 1868.)

Stated in Cole v. Sanders, 174 N. C. 112, 93 S. E. 476 (1917).

§ 3. Drawing money.—No money shall be drawn from the treasury 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. (Const. 1868.)

Editor's Note.—This section is an exact repetition of the United States Constitution, Art. I, § 9, cl. 7.

Legislative Authority Required. — This section means that there must be legislative authority in order for money to be validly drawn from the treasury. In other words, the legislative power is supreme over the public purse. White v. Hill, 125 N. C. 194, 34 S. E. 432 (1899), citing Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

Moneys paid into the hands of the State Treasurer by virtue of a State law become public funds for which the Treasurer is responsible and may be disbursed only in accordance with legislative authority. Gardner v. Board of Trustees, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Section as Bar to Judicial Action.—This section effectually bars any judicial action to enforce collection of liabilities against the State, and the courts cannot direct the State Treasurer to pay such claims, however just and unquestioned, when there is no legislative appropriation to pay the same. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

When Mandamus Will Lie.—It is only when the legislative department has appropriated a certain fund to the payment of a liability incurred or to be incurred and the Auditor or Treasurer refuses to obey the legislative mandate that the court can issue its mandamus to compel him to do so. Garner v. Worth, 122 N. C. 250, 29 S. E. 364 (1898).

The State Treasurer may refuse to pay a warrant of the Auditor if it appear that the law under which it is issued is unconstitutional or the claim is not within the terms of the statute under which it is brought. Martin v. Clark, 135 N. C. 178, 47 S. E. 397 (1904).

Mandamus to Enforce Payment against County.—See § 153-64 and the notes thereto.

§ 4. 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. (Const. 1868.)

Editor's Note. — Under the power given by this section of the Constitution the legislature has passed numerous enactments which secure to mechanics and laborers adequate liens and means for their enforcement. These provisions may be found in §§ 44-1 et seq. Since the language of this constitutional section is clear and unobscure, merely giving to the General Assembly a well-defined power, little judicial construction will be found, all the cases merely stating this provision of the Constitution as the foundation of the G. S. sections above referred to. Whatever seemingly ambiguous terms that may be found in the Code sections which have sprung out of this section of the Constitution are explained in the note to the specific section in the Code.

Quoted in Roper Lumber Co. v. Lawson, 195 N. C. 840, 143 S. E. 847 (1928); Boykin v. Logan, 203 N. C. 196, 165 S. E. 680 (1932).

§ 5. Governor to make appointments.—In the absence of any contrary provision, all officers of this State, whether heretofore elected or appointed by the Governor, shall hold their positions only until other appointments are made by the Governor, or, if the officers are elective, until their successors shall have been chosen and duly qualified according to the provisions of this Constitution. (Const. 1868.)

Cited in Markham v. Simpson, 175 N. C. 135, 95 S. E. 106 (1918); Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

§ 6. **Seat of government.**—The seat of government in this State shall remain at the city of Raleigh. (Const. 1868.)

§ 7. **Holding office.**—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, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes. (Const. 1868; 1872-73, c. 88; 1943, c. 432.)

Cross References.—As to what constitutes a public office and numerous illustrations thereof, see note to § 1-515. As to form and nature of the action to declare an office vacant, see §§ 1-515 et seq. and the notes there placed.

Editor's Note. — This section was amended by vote at the general election of November 7, 1944. The amendment inserted "notaries public" in the proviso to the section.

Section 7 of the Constitution of 1868, was amended pursuant to c. 88, Public Laws of 1872-73, to read as follows: "No person shall hold more than one lucrative office under the State, at the same time: Provided, That officers in the Militia, Justices of the Peace, Commissioners of Public Charities, and Commissioners appointed for special purposes, shall not be considered officers within the meaning of this section."

Purpose.—The manifest intent is to prevent double office-holding—that offices and places of public trust should not accumulate in any single person—and the superadded words of "places of trust or profit" were put there to avoid evasion in giving too technical a meaning to the preceding words. Doyle v. Raleigh, 89 N. C. 133 (1883), approved in Groves v. Borden, 169 N. C. 8, 84 S. E. 1042 (1915).

This section was never intended to discourage public officials from assuming military leadership in time of emergency. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

Under this section, which is intended and designed to prevent or inhibit double office-holding, except in certain instances, it is not permissible for one person to hold two offices at the same time. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944); In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

Definition of Public Office.—An office is a public station, or employment, conferred by appointment of government and the term embraces the idea of tenure, duration, emolument, and duties. In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

Where the office which judge proposed to accept carried with it some of the attributes of sovereignty, and perforce invested him with governmental authority, he would be holding an office or place of trust or profit under the United States, or a department thereof, within the meaning of this section. In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

Effect of Acceptance of Similar Office.—Where one holding an "office or place of profit" accepts another such office or position in contravention of this section of the Constitution, the first is vacated eo instanti, and any further acts done by him in connection with the first office are without color, and cannot be de facto. Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976 (1914).

The acceptance of a second office, which is forbidden or incompatible with the office already held, operates ipso facto to vacate the first. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944); In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

In Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898), it is said: "The acceptance of a second office by holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which he will retain, his election is deemed to have been made when he accepts and qualifies for the second." The acceptance of the second office is of itself a resignation of the first. Whitehead v. Pittman, 165 N. C. 89, 80 S. E. 976 (1914).

The jurisdiction of a judge of a municipal recorder's court to impose sentence cannot be successfully attacked on the ground that at the time the recorder was appointed he was mayor of the municipality and therefore held two offices in contravention of this section, since even if it be granted that the statute permitting a mayor to be appointed recorder confers upon the mayor when chosen recorder other than ex-officio duties, the acceptance of the office of recorder would vacate the office of mayor, but would not affect the office of

recorder. In re Barnes, 212 N. C. 735, 194 S. E. 499 (1938).

The constitutional inhibition against double office holding is enforced in alternative ways, depending on whether the first office is a State or a federal office. 1. Where one holding a first office under the State violates this section by accepting a second office under either the State or the United States without surrendering the first office, he automatically and instantly vacates the first office, and he does not thereafter act as either a de jure or a de facto officer in performing functions of the first office because he has neither right nor color of right to it. 2. Where one holding a first office under the United States violates the section by accepting a second office under the State without surrendering the first office, his attempt to qualify for the second office is absolutely void, and he does not act as either a de jure or a de facto officer in performing functions of the second office because he has neither right nor color of right to it. Edwards v. Yancey County Board of Ed., 235 N. C. 345, 70 S. E. (2d) 170 (1952).

Where a vacancy in a public office occurs by virtue of the constitutional provision against double office holding, such vacancy occurs as of the date of the acceptance of the second office unaffected by the fact that the person accepting the second office continues to discharge the duties of the office in good faith, since ignorance of the law excuses no man. State v. Fortner, 236 N. C. 264, 72 S. E. (2d) 594 (1952).

Actions for Removal Where One Accepts Second Office.—When a person holding an office or place of trust accepts and qualifies for a second office, within the meaning of this section, the first office ipso facto becomes vacated, and an action to declare the first office vacant may be instituted in the name of the State on the relation of the Attorney General, by any individual who is a citizen and taxpayer of the jurisdiction where the officer is to exercise the powers of his office, but such an action cannot be maintained unless it appears that the leave of the Attorney General has been obtained either before the commencement of the action or afterwards supplied pending the proceedings. Midgett v. Gray, 158 N. C. 133, 73 S. E. 791 (1912).

A statute providing that the incumbent of one public office should also fill another public office is unconstitutional as violating this section, and cannot be upheld as merely affording the choice between the offices so that the acceptance of the second office would ipso facto vacate the first, since incumbency in the first is essential to incumbency in the second. But a statute which creates no new office and appoints no additional, but merely attaches new duties to offices already existing, to be performed by the incumbents therein, does not violate this section. Brigman v. Baley, 213 N. C. 119, 195 S. E. 617 (1938).

County Commissioner Accepting Commission as Notary.—For case decided prior to the addition of the words "notary public" in the proviso to this section, see Harris v. Watson, 201 N. C. 661, 161 S. E. 215 (1931).

Naval Officer Appointed to Office of Zoning Commissioner.—A naval officer holds office under the United States government and therefore under the provision of this section he could not hold the office of zoning commissioner, and was neither a de facto nor a de jure commissioner. Vance S. Harrington & Co. v. Renner, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

Recorder May Also Be Justice of Peace.—This section does not forbid one to hold the position of recorder of a town and the office of justice of the peace at the same time. State v. Lord, 145 N. C. 479, 59 S. E. 656 (1907).

Imposition of Additional Duties.—Chapter 341, Public-Local Laws of 1931, providing that the chairmen of certain county boards of Madison County should elect a tax manager for the county, merely imposes additional duties ex officio upon the said chairmen, and does not provide that any one of them should hold two public offices in violation of this section. Freeman v. Board of Com'rs, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

Delegation of Duties.—A statute which places the affairs of a municipal corporation in the hands of a city council and a city manager and provides that in the event of a vacancy in the office of city manager, by sickness or otherwise, the council may delegate the duties of this office to one of its members, to be performed ex officio as mere auxiliary duties with such compensation as the council may determine, but shall receive no salary as a member of the council, is held not to contravene this section. State v. Holmes, 207 N. C. 293, 176 S. E. 746 (1934).

Applied in Barnhill v. Thompson, 122 N. C. 493, 29 S. E. 720 (1898); McCullers v. Commissioners, 158 N. C. 75, 73 S. E. 816 (1911).

§ 8. 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. (Convention 1875.)

Editor's Note.—This section was added by the Convention of 1875. It constitutes the first clause of § 14-181. Reference is therefore made to the note placed under that section.

Persons within Prohibited Degree.—Every person who has one-eighth negro blood in his veins is within the prohibited degree set out in this section and § 51-3. State v. Miller, 224 N. C. 228, 29 S. E. (2d) 751 (1944).

Stated in Epps v. Carmichael, 93 F. Supp. 327 (1950).

Constitution of the United States

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I

§ **1.** All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ **2.** [1.] The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

[2.] No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state in which he shall be chosen.

[3.] Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The first sentence of this clause (art. I, § 2, cl. 3) is amended by Amendment XIV, § 2 and Amendment XVI.

[4.] When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

[5.] The house of representatives shall chuse their speaker and other officers; and shall have the sole power of impeachment.

§ **3.** [1.] The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Art. I, § 3, cl. 1, is superseded by Amendment XVII.

[2.] Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary

appointments until the next meeting of the legislature, which shall then fill such vacancies.

[3.] No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[4.] The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

[5.] The senate shall chuse their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

[6.] The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

[7.] Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

§ **4.** [1.] The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of chusing senators.

[2.] The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ **5.** [1.] Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

[2.] Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

[3.] Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

[4.] Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ **6.** [1.] The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

[2.] No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

§ **7.** [1.] All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

[2.] Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

[3.] Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ **8.** The congress shall have power [1.] To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

[2.] To borrow money on the credit of the United States;

[3.] To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

[4.] To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

[5.] To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

[6.] To provide for the punishment of counterfeiting the securities and current coin of the United States;

[7.] To establish post offices and post roads;

[8.] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

[9.] To constitute tribunals inferior to the supreme court;

[10.] To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

[11.] To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

[12.] To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

[13.] To provide and maintain a navy;

[14.] To make rules for the government and regulation of the land and naval forces;

[15.] To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

[16.] To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by congress;

[17.] To exercise exclusive legislation in all cases whatsoever, over such dis-

trict (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislture of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

[18.] To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

§ 9. [1.] The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

[2.] The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

[3.] No bill of attainder or ex post facto law shall be passed.

[4.] No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[5.] No tax or duty shall be laid on articles exported from any state.

[6.] No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

[7.] No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

[8.] No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. [1.] No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts, or grant any title of nobility.

[2.] No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

[3.] No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

§ 1. [1.] The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:

[2.] Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3.] The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the

number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner chuse the president. But in chusing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall chuse from them by ballot the vice president.

Art. II, § 1, cl. 3, is superseded by Amendment XII.

[4.] The congress may determine the time of chusing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States.

[5.] No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

[6.] In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

[7.] The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

[8.] Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability preserve, protect and defend the constitution of the United States."

§ 2. [1.] The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

[2.] He shall have power, by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may

by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

[3.] The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

§ **3.** He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ **4.** The president, vice president and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

§ **1.** The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

§ **2.** [1.] The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

See Amendment XI, as to suits against a state by citizens of another state or citizens or subjects of a foreign state.

[2.] In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

[3.] The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

§ **3.** [1.] Treason against the United States shall consist only in levying war against them, or in adhering to their 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.

[2.] The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV

§ **1.** Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

§ **2.** [1.] The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

[2.] A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

[3.] No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

§ **3.** [1.] New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

[2.] The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ **4.** The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress. Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI

[1.] All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

[2.] This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

[3.] The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to

support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. In Witness whereof we have hereunto subscribed our names.

Go. WASHINGTON
Presidt. and deputy from Virginia.

New Hampshire.
John Langdon and Nicholas Gilman.

Massachusetts.
Nathaniel Gorham and Rufus King.

Connecticut.
Wm. Saml. Johnson and Roger Sherman.

New York.
Alexander Hamilton.

New Jersey.
Wil: Livingston, David Brearley, Wm. Patterson and Jona: Dayton.

Pennsylvania.
B. Franklin, Robt. Morris, Thos. Fitzsimmons, James Wilson, Thomas Mifflin, Geo. Clymer, Jared Ingersoll and Gouv Morris.

Delaware.
Geo. Read, John Dickenson, Jaco: Broom, Gunning Bedford Jun, and Richard Bassett.

Maryland.
James McHenry, Danl. Carroll and Dan: of St. Thos. Jenifer.

Virginia.
John Blair—James Madison, Jr.

North Carolina.
Wm. Blount, Hu Williamson and Richd. Dobbs Spaight.

South Carolina.
Charles Pinckney, J. Rutledge, Charles Cotesworth Pinckney and Pierce Butler.

Georgia.
William Few and Abr. Baldwin.

Attest: William Jackson, Secretary.

The states ratified the Constitution in the following order:

Delaware	December 7, 1787
Pennsylvania	December 12, 1787
New Jersey	December 18, 1787
Georgia	January 2, 1788
Connecticut	January 9, 1788
Massachusetts	February 6, 1788
Maryland	April 26, 1788
South Carolina	May 23, 1788
New Hampshire	June 21, 1788
Virginia	June 26, 1788
New York	July 26, 1788
North Carolina	November 21, 1789
Rhode Island	May 29, 1790

AMENDMENTS

Articles in addition to, and amendment of, the constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

The first ten amendments were proposed by Congress on September 25, 1789, and became effective on December 15, 1791.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II.

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.

Amendment III.

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 to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

AMENDMENT XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

AMENDMENT XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

AMENDMENT XIII.

§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state,

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ **3.** No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house remove such disability.

§ **4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ **5.** The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV.

§ **1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ **2.** The congress shall have power to enforce this article by appropriate legislation.

Amendment XVI.

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Amendment XVII.

The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

Amendment XVIII.

§ **1.** After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or

the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes, is hereby prohibited.

§ **2.** The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ **3.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

AMENDMENT XIX.

§ **1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

§ **2.** Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX.

§ **1.** The terms of the president and vice president shall end at noon on the 20th day of January, and the terms of senators and representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ **2.** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

§ **3.** If, at the time fixed for the beginning of the term of the president, the president elect shall have died, the vice president elect shall become president. If a president shall not have been chosen before the time fixed for the beginning of his term, or if the president elect shall have failed to qualify, then the vice president elect shall act as president until a president shall have qualified; and the congress may by law provide for the case wherein neither a president elect nor a vice president elect shall have qualified, declaring who shall then act as president, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a president or vice president shall have qualified.

§ **4.** The congress may by law provide for the case of the death of any of the persons from whom the house of representatives may choose a president whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the senate may choose a vice president whenever the right of choice shall have devolved upon them.

§ **5.** Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

§ **6.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

The Twentieth Amendment was declared in a proclamation of the Secretary of State, dated February 6, 1933, to have been ratified by thirty-nine of the forty-eight states.

AMENDMENT XXI.

§ **1.** The eighteenth article of amendment to the constitution of the United States is hereby repealed.

§ **2.** The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ **3.** This article shall be inoperative unless it shall have been ratified as an

amendment to the constitution by conventions in the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

The Twenty-first Amendment was declared in a proclamation of the Acting Secretary of State, dated December 5, 1933, to have been ratified by thirty-six of the forty-eight states.

By his proclamation of December 5, 1933, the President proclaimed that the Eighteenth Amendment to the Constitution was repealed on December 5, 1933.

Amendment XXII.

§ 1. No person shall be elected to the office of the president more than twice, and no person who has held the office of president, or acted as president, for more than two years of a term to which some other person was elected president shall be elected to the office of the president more than once. But this article shall not apply to any person holding the office of president when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of president, or acting as president, during the term within which this article becomes operative from holding the office of president or acting as president during the remainder of such term.

§ 2. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the congress.

The Twenty-second Amendment was certified by the Administrator of General Services on March 1, 1951, to have been ratified by three fourths of the whole number of states and to have become valid as a part of the Constitution of the United States.

I. Rules of Practice in the Supreme Court and Superior Courts of North Carolina

(1) RULES OF PRACTICE IN THE SUPREME COURT OF NORTH CAROLINA.

4. Appeals—How Docketed.

The rules of the Supreme Court governing appeals are mandatory and not directory, and must be universally enforced. Warshaw v. Warshaw, 236 N. C. 754, 73 S. E. 2d) 900 (1952).

5. Appeals—When Heard.

The transcript of the record on appeal from a judgment rendered before the commencement of a term of this Court must be docketed at such term twenty-one days before entering upon the call of the docket of the district to which it belongs, and stand for argument in its order; if not so docketed, the case shall be continued or dismissed under Rule 17, if the appellee file a proper certificate prior to the docketing of the transcript.

The transcript of the record on appeal from a court in a county in which the court shall be held during the term of this Court may be filed at such term or at the next succeeding term. If filed twenty-one days before the Court begins the perusal of the docket of the district to which it belongs, it shall be heard in its order; otherwise, if a civil case, it shall be continued, unless by consent it is submitted upon printed argument under Rule 10.

Editor's Note.—By amendment, effective July 1, 1951, the words "twenty-one days" in line four of the first paragraph and in line five of the second paragraph were substituted for "fourteen days". As the third paragraph was not changed it is not set out.

Rules Mandatory.—

This rule regulating the time within which appeals must be docketed in the supreme court is mandatory and cannot be abrogated by consent or otherwise. Jones v. Jones, 232 N. C. 518, 61 S. E. (2d) 335.

When case is not docketed within time prescribed by this rule and no application for writ of certiorari is made, appeal will be dismissed, the rules of practice in the supreme court being mandatory and not directory. State v. Presnell, 226 N. C. 160, 36 S. E. (2d) 927.

Applied in State v. Harrell, 226 N. C. 743, 40 S. E. (2d) 205; State v. Scriven, 232 N. C. 198, 59 S. E. (2d) 428; State v. Hall, 233 N. C. 310, 63 S. E. (2d) 636.

6. Appeals—Criminal Actions.

Appeals in criminal cases, docketed twenty-one 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.

Editor's Note.—By amendment, effective July 1, 1951, "twenty-one" in line one was substituted for "fourteen".

7. Call of Judicial Districts.

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, unless otherwise directed by the Court, and those from the district last named will not be called before Wednesday of said week, unless otherwise directed by the Court, but appeals from the district last named must nevertheless be docketed not later than twenty-one days preceding the call for the week.

Editor's Note.—The amendment, effective July 1, 1951, inserted in the last paragraph the words "unless otherwise directed by the court" and substituted "twenty-one" for "fourteen" near the end of the paragraph. As the rest of the rule was not changed it is not set out.

10. Submission on Printed Arguments.

Applied in Shaw University v. Durham Life Ins. Co., 230 N. C. 526, 53 S. E. (2d) 656.

Cited in Fuquay v. Fuquay, 232 N. C. 692, 62 S. E. (2d) 320.

17. Appeal Dismissed for Failure to Docket in Time.

If the appellant in a civil action, or the defendant in a criminal prosecution, shall fail to bring up and file a transcript of the record twenty-one days before the Court begins the call of cases from the district from which it comes at the term of this Court at which such transcript is required to be filed the appellee may file with the clerk of this Court the certificate of the clerk of the court from which the appeal comes, showing the names of the parties thereto, the time when the judgment and appeal were taken, the name of the appellant, and the date of the settling of the case on appeal, if any has been settled, with his motion to docket and dismiss at appellant's cost said appeal, which motion shall be allowed at the first session of the Court thereafter, with leave to the appellant, during the term, and after notice to the appellee, to apply for the redocketing of the cause; Provided, that such motion of appellee to docket and dismiss the appeal will not be considered unless the appellee, before making the motion to dismiss, has paid the clerk of this Court the fee charged by the statute for docketing an appeal, the fee for drawing and entering judgment, and the determination fee, execution for such amount to issue in favor of appellee against appellant.

Editor's Note.—By amendment, effective July 1, 1951, "twenty-one" in line three of the first paragraph was substituted for "fourteen". As only this paragraph was changed the rest of the rule is not set out.

Right of Appellee.—

In accord with 3rd paragraph in original. See State v. Buchanan, 224 N. C. 626, 31 S. E. (2d) 774; State v. Brooks, 224 N. C. 627, 31 S. E. (2d) 754; State v. Alexander, 224 N. C. 478, 31 S. E. (2d) 357; State v. Taylor, 224 N. C. 479, 31 S. E. (2d) 367.

Certiorari to Preserve Right of Appeal.—Where appellant fails to file his case on appeal fourteen days before the call of the district to which it belongs, he may apply for certiorari to preserve his right of appeal and appellees' motion filed thereafter to docket and dismiss under this rule will be denied. State v. Jones, 225 N. C. 363, 34 S. E. (2d) 202.

When Motion Allowed in Capital Case.—In a capital case, where the time for bringing up the case on appeal has expired, in the absence of any apparent error in the record before the court, the motion of the attorney-general to docket and dismiss, under this rule, is allowed. State v. Poole, 223 N. C. 394, 26 S. E. (2d) 858.

Where appellant did not docket the appeal or file transcript of the record on appeal within the time allowed, and failed to comply with mandatory rules of practice in the supreme court, the motion of the attorney-general to docket and dismiss will be allowed, but in a capital case this will be done only after a careful examination of the whole record fails to disclose error. State v. Scriven, 232 N. C. 198, 59 S. E. (2d) 428. See State v. Hall, 233 N. C. 310, 63 S. E. (2d) 636.

Where defendant fails to file statement of case on appeal or apply for writ of certiorari within the time allowed, the appeal will be dismissed on motion of the attorney-general, but where defendant has been convicted of a capital felony this will be done only after an inspection of the record proper fails to show error. State v. Garner, 230 N. C. 66, 51 S. E. (2d) 895; State v. Lewis, 230 N. C. 539, 53 S. E. (2d) 528.

Where a defendant convicted of a capital felony fails to file case on appeal in the superior court, the motion of the attorney-general to docket and dismiss, made after expiration of time agreed for perfecting the appeal and any extension of time which may have been granted, will be allowed after a careful inspection of the record proper fails to disclose error. State v. Nelson, 226 N. C. 529, 39 S. E. (2d) 391.

Applied in State v. Daniels, 231 N. C. 509, 57 S. E. (2d) 653; Woody v. Barnett, 235 N. C. 73, 68 S. E. (2d) 810 (1952); State v. Miller, 235 N. C. 394, 70 S. E. (2d) 2 (1952).

Cited in Brown v. Allen, 344 U. S. 443, 73 S. Ct. 397, 437 (1953).

(1) Appeal Docketed by Appellee When Frivolous and Taken for Purposes of Delay.

When Statement of Case Contains No Assignments of Error.—Where the agreed statement of case on appeal contains no exceptions or assignments of error, making it apparent that the appeal was taken solely for the purpose of delay, appellee's motion to docket and dismiss under this rule will be allowed. Stephenson v. Watson, 226 N. C. 742, 40 S. E. (2d) 351.

19. Transcripts.

(1) What to Contain and How Arranged.

The omission of the essential parts of a transcript, as required by this rule, is fatal to the appeal. Allen v. Allen, 235 N. C. 554, 70 S. E. (2d) 505 (1952).

The pleadings are an essential part of the record in order that the Supreme Court may be advised as to the nature of the action or proceeding. Allen v. Allen, 235 N. C. 554, 70 S. E. (2d) 505 (1952).

Essential Parts of Transcript in Criminal Cases.—On appeal in criminal cases, the indictment or warrant and plea on which the case is tried, the verdict and the judgment appealed from are essential parts of the transcript. State v. Jenkins, 234 N. C. 112, 66 S. E. (2d) 819 (1952).

Transcript Failing to Meet Requirements of Subdivision (1).—See Smoak v. Newton, 234 N. C. 451, 67 S. E. (2d) 462 (1951).

Applied in Ericson v. Ericson, 226 N. C. 474, 38 S. E. (2d) 517; Wayne County Board of Education v. Lewis, 231 N. C. 661, 58 S. E. (2d) 725.

Cited in State v. Avery, 236 N. C. 276, 72 S. E. (2d) 670 (1952); Brown v. Allen, 344 U. S. 443, 73 S. Ct. 397, 437 (1953).

(2) Two Appeals.

Where indictments relating to one offense against several defendants are properly consolidated for trial, only one record should be filed on the appeals of defendants. State v. Jackson, 226 N. C. 760, 40 S. E. (2d) 417.

Cited in Hoke v. Atlantic Greyhound Corp., 227 N. C. 412, 42 S. E. (2d) 593.

(3) Exceptions Grouped.

The questions arising on an appeal are those defined by appropriate exceptions taken by the appellant in the superior court. Sprinkle v. Reidsville, 235 N. C. 140, 69 S. E. (2d) 179 (1952).

Exceptions to Rulings Granting New Trial, etc.—

In Watkins v. Grier, 224 N. C. 334, 338, 30 S. E. (2d) 219, it was held that any confusion there was in the transcript of the case on appeal to the Supreme Court, arose upon the merging of the proceedings in the trial in the municipal court with the proceedings had on appeal to Superior Court, without separate grouping of exceptions presented on such appeal. See also, Watkins v. Grier, 224 N. C. 339, 30 S. E. (2d) 223.

Not Sufficient to Show Exceptions in Record.—See State v. Biggerstaff, 226 N. C. 603, 605, 39 S. E. (2d) 619.

Exceptions Not Set Out Deemed Abandoned.—This rule provides that all exceptions shall be grouped and separately numbered immediately before or after the signature to the case on appeal, and exceptions not thus set out are deemed abandoned. State v. Biggerstaff, 226 N. C. 603, 604, 39 S. E. (2d) 619.

Discretion of Supreme Court.—Where the exceptions are separately numbered and only one of them is necessary to be considered in disposing of the appeal, the supreme court in its discretion may dispose of the case on its merits notwithstanding failure of appellant to separately assign the exceptions as error. Aydlett v. Keim, 232 N. C. 367, 61 S. E. (2d) 109.

Appeal Dismissed for Failure to Follow Rule.—

Where the exceptions and assignments of error are not grouped as required by this rule, the appeal may be dismissed. Eno Inv., Co. v. Protective Chemicals Laboratory, 233 N. C. 294, 63 S. E. (2d) 637.

In Capital Case.—Where defendant's exceptions are not brought forward and grouped as required by this rule, the appeal will be dismissed, but where defendant has been convicted of a capital crime this will be done only after an inspection of the record proper and the exceptions fail to disclose prejudicial error. State v. West, 229 N. C. 416, 50 S. E. (2d) 3.

In State v. Thompson, 224 N. C. 661, 665, 32 S. E. (2d) 24, although the assignments of error appearing on the record were not brought forward and grouped in accordance with the requirements of this rule, since defendants had been sentenced to death, the supreme court considered the appeal on its merits.

Exception Held Ineffectual.—An exception to the charge on the ground that it "did not give the contentions of the plaintiffs with equal dignity with those of defendant" as required by G. S. § 1-180 held ineffectual as a broadside exception in that it fails to point out any particular contention or series of contentions given or omitted by the court as the basis for the exception. Poniros v. Nello L. Teer Co., 236 N. C. 144, 72 S. E. (2d) 9 (1952).

Cited in Curlee v. Scales, 223 N. C. 788, 28 S. E. (2d) 576; State v. Scriven, 232 N. C. 198, 59 S. E. (2d) 428; State v. Summerlin, 232 N. C. 333, 60 S. E. (2d) 322; State v. Liles, 232 N. C. 622, 61 S. E. (2d) 603.

20. Pleadings.

(1) When Deemed Frivolous.

Transcript Failing to Meet Requirements of Rule.—See Smoak v. Newton, 234 N. C. 451, 67 S. E. (2d) 462 (1951).

Applied in Ericson v. Ericson, 226 N. C. 474, 38 S. E. (2d) 517.

(2) When Containing More than One Cause of Action.

Referring to Prior Paragraphs by Number Insufficient.—A party may not bring forward allegations contained in prior paragraphs of the pleading by referring to such paragraphs by number and stating that pleader repleads them. Wrenn v. Graham, 236 N. C. 719, 74 S. E. (2d) 232 (1952).

An attempt to repeat in the statement of the second cause of action what is alleged in the first cause of action merely by referring to the appropriate paragraphs of the first cause by number is violative of this rule. Guy v. Baer, 234 N. C. 276, 67 S. E. (2d) 47 (1951).

Effect of Noncompliance.—Demurrer to answer will not be sustained if sufficient facts can be gathered from pleadings to entitle defendant to some relief, notwithstanding answer fails to state separately cause or causes relied on for affirmative relief and the matters relied on as defenses as required by this rule and § 1-138. Pearce v. Pearce, 22 N. C. 307, 37 S. E. (2d) 904.

Cited in King v. Coley, 229 N. C. 258, 49 S. E. (2d) 648.

(3) When Scandalous.

Editor's Note.—For article on motion to strike pleadings see 29 N. C. Law Rev. 3.

21. Exceptions. (See also, Rule 19(3).)

I. EXCEPTIONS.

An assignment of error alone will not suffice. Only an assignment of error bottomed on an exception duly entered in the record will serve to present a question of law for the Supreme Court to decide. State v. Williams, 23 N. C. 429, 70 S. E. (2d) 1 (1952).

The questions arising on an appeal are those defined by appropriate exceptions taken by the appellant in the superior court. Sprinkle v. Reidsville, 235 N. C. 140, 29 S. E. (2d) 179 (1952).

Agreement of Counsel.—Where the record shows that the

solicitor agreed that the statement of case on appeal, containing an exception to his argument to the jury and an assignment of error based thereon, should constitute the case on appeal, this is sufficient as an exceptive assignment of error even though defendant made no objection and took no exception at the time. State v. Hawley, 229 N. C. 167, 48 S. E. (2d) 35.

Exception Not Considered.—
The failure of the court to restrict the admission of testimony competent for the purpose of corroboration is not error where defendant neither objects to the admission of the testimony nor requests that its admission be restricted. State v. Perry, 226 N. C. 530, 39 S. E. (2d) 460.

Assignments Not Based on Exceptions Considered in Capital Case.—Assignments of error should be based upon exceptions briefly and clearly stated and numbered in the record, but in a capital case, wherein the life of defendant is at stake, assignments of error not so based nevertheless will be considered. State v. Herring, 226 N. C. 213, 37 S. E. (2d) 319.

Insufficiency of Indictment.—
A motion in arrest of judgment for insufficiency of an indictment or warrant may be made for the first time in the Supreme Court. State v. Sawyer, 233 N. C. 76, 62 S. E. (2d) 515.

Misnomer.—A motion in arrest of judgment must be based on matters appearing on the face of the record or which should appear thereon and do not, and therefore motion in arrest will not lie for a misnomer, since it can be supported only by facts dehors the record. State v. Sawyer, 233 N. C. 76, 62 S. E. (2d) 515.

Applied in State v. Ham, 224 N. C. 128, 29 S. E. (2d) 449; State v. McKnight, 226 N. C. 766, 40 S. E. (2d) 419; State v. Gentry, 228 N. C. 643, 46 S. E. (2d) 863; State v. Harris, 229 N. C. 413, 50 S. E. (2d) 1; State v. Scriven, 232 N. C. 198, 59 S. E. (2d) 428.

Cited in Curlee v. Scales, 223 N. C. 788, 28 S. E. (2d) 576; State v. Scoggins, 225 N. C. 71, 73, 33 S. E. (2d) 473; Wayne County Board of Education v. Lewis, 231 N. C. 661, 58 S. E. (2d) 725; State v. Dover, 231 N. C. 735, 61 S. E. (2d) 63; State v. Liles, 232 N. C. 622, 61 S. E. (2d) 603; Morgan v. High Penn Oil Co., 236 N. C. 615, 73 S. E. (2d) 477 (1952).

II. CORROBORATIVE AND CONTRADICTORY EVIDENCE.

When Evidence Competent for Some Purposes, etc.—
Where evidence, admissible only for the purpose of attacking the credibility of a witness, is admitted generally without objection, there is no error in the court's failure to so restrict its use. State v. McKinnon, 223 N. C. 160, 25 S. E. (2d) 606.

Where the evidence to which exceptions relate is competent for purpose of corroboration, and the record fails to show that appellant asked, at the time, that its purpose be restricted, the admission of the statements will not be ground for exception. Humphries v. Queen City Coach Co., 228 N. C. 399, 45 S. E. (2d) 546.

Where evidence competent for the purpose of corroboration is admitted generally, and defendant fails at the time of its admission to request that its purpose be restricted, his exception to the admission of the testimony cannot be sustained. State v. Walker, 226 N. C. 458, 38 S. E. (2d) 531.

Where blouse introduced had certain tears about the shoulder, and prosecutrix and another witness testified that on night of alleged assault blouse prosecutrix had on was torn about the shoulder, the admission of the blouse in evidence was competent to corroborate witnesses, and, in absence of request to limit it to corroboration, it was competent for general purposes. State v. Petry, 226 N. C. 78, 80, 36 S. E. (2d) 653.

Evidence Competent When Introduced.—Where plaintiff sued for divorce on ground of adultery and defendant in cross-action alleged adultery on the part of plaintiff but at close of evidence withdrew her cross action, it was held that since evidence of adultery on the part of plaintiff was competent at the time of its introduction and there was no motion to strike when defendant withdrew cross-action, plaintiff was not unduly prejudiced by its admission. Ziglar v. Ziglar, 226 N. C. 102, 36 S. E. (2d) 657.

22. Printing Transcripts. (But see Rule 25.)

Applied in State v. Scriven, 232 N. C. 198, 59 S. E. (2d) 428.

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 $1.40 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.

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 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 under the same penalty as therein prescribed for failure to pay the account due for such work.

Editor's Note.—By amendment, effective February 1, 1947, this rule was changed so as to authorize the clerk to charge not in excess of $1.25 per page for mimeographing records and briefs. By amendment, effective July 1, 1951, this amount was increased to $1.40. The amendment also struck out the former provisions relating to the marshal of the Supreme Court.

27. Briefs.

When No Brief Filed.—
The failure to file a brief as required by this rule works an abandonment of the assignments of error, except those appearing upon the face of the record, which are cognizable ex mero motu. Dillard v. Brown, 233 N. C. 551, 64 S. E. (2d) 843 (1951).

27½. Statement of the Questions Involved.

Quoted in Steelman v. Benfield, 228 N. C. 651, 46 S. E. (2d) 829.

Cited in State v. Dover, 231 N. C. 735, 61 S. E. (2d) 63; State v. Liles, 232 N. C. 622, 61 S. E. (2d) 603.

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 Tuesday 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.

Editor's Note.—By amendment, effective July 1, 1951, the word "Tuesday" in line ten of the second paragraph was substituted for "Saturday". As the first paragraph was not changed it is not set out.

Failure to File Brief.—
Where appellant does not file a brief his appeal will be dismissed. Wilson v. Ervin, 227 N. C. 396, 42 S. E. (2d) 468.

Exceptions Not Discussed Deemed Abandoned.—
In accord with 5th paragraph in original. See State v. Hill, 225 N. C. 74, 33 S. E. (2d) 470; State v. Britt, 225 N. C. 364, 34 S. E. (2d) 408; Troitino v. Goodman, 225 N. C. 406, 35 S. E. (2d) 277; Clark v. Cagle, 226 N. C. 230, 37 S. E. (2d) 672; State v. Frye, 229 N. C. 581, 50 S. E. (2d) 895; State v. Muse, 230 N. C. 495, 53 S. E. (2d) 529; Williams v. Williams, 231 N. C. 33, 56 S. E. (2d) 20; State v. Wiggins, 232 N. C. 619, 61 S. E. (2d) 611; Weaver v. Morgan, 232 N. C. 642, 61 S. E. (2d) 916.

Exceptions not set out in the brief and in support of which no argument is given, are deemed abandoned. State v. Randolph, 228 N. C. 228, 45 S. E. (2d) 132; State v. Brown, 233 N. C. 202, 63 S. E. (2d) 99.

Where an exception is not argued in the brief it is taken as abandoned. Randle v. Grady, 228 N. C. 159, 45 S. E. (2d) 35.

Exceptions not set out in defendants' brief are considered abandoned. State v. Thompson, 224 N. C. 661, 664, 32 S. E. (2d) 24. See State v. Stone, 226 N. C. 97, 36 S. E. (2d) 704; State v. Malpass, 226 N. C. 403, 38 S. E. (2d) 156.

Exceptions not argued or referred to in appellant's brief are deemed abandoned. State v. Smith, 223 N. C. 457, 27 S. E. (2d) 114; State v. Epps, 223 N. C. 740, 28 S. E. (2d) 219; State v. Hart, 226 N. C. 200, 37 S. E. (2d) 487.

Exceptions not discussed in appellant's brief are deemed abandoned. Gillis v. Great Atlantic, etc., Tea Co., 223 N. C. 470, 27 S. E. (2d) 283; Merchant v. Lassiter, 224 N. C. 343, 30 S. E. (2d) 217; State v. Reid, 230 N. C. 561, 53 S. E. (2d) 849.

Assignments of error, without reason, argument, or authority in the brief to support them, will not be considered on appeal. Hopkins v. Colonial Stores, 224 N. C. 137, 29 S. E. (2d) 455; State v. Hightower, 226 N. C. 62, 36 S. E. (2d) 649.

Assignments of error not brought forward and discussed in appellant's brief are deemed abandoned. State v. Jones, 227 N. C. 94, 40 S. E. (2d) 700. See Bell v. Brown, 227 N. C. 319, 42 S. E. (2d) 92; State v. Carroll, 226 N. C. 237, 37 S. E. (2d) 688; State v. Cogdale, 227 N. C. 59, 40 S. E. (2d) 467; State v. Fairley, 227 N. C. 134, 41 S. E. (2d) 88; State v. Avery, 236 N. C. 276, 72 S. E. (2d) 670 (1952).

Exceptions set out in the record, and not preserved as required by this rule, are to be considered as abandoned. Higgins v. Higgins, 223 N. C. 453, 455, 27 S. E. (2d) 128.

Exceptions to allegations not brought forward in the plaintiff's brief are abandoned. Reliable Trucking Co. v. Payne, 233 N. C. 637, 65 S. E. (2d) 132 (1951).

Exceptions to which no reason or argument is submitted are deemed abandoned. Swinton v. Savoy Realty Co., 236 N. C. 723, 73 S. E. (2d) 785 (1952).

Exceptions referred to in defendants' brief as "formal exceptions" and as to which no argument is made and no authority cited are deemed abandoned. State v. Hunt. 223 N. C. 173, 25 S. E. (2d) 598.

Where an exception is carried forward in appellants' brief, but no reason or argument is stated or authority cited in support thereof, as required by this rule, the exception is taken as abandoned. Wingler v. Miller, 223 N. C. 15, 19, 25 S. E. (2d) 160; Penny v. Stone, 228 N. C. 295, 45 S. E. (2d) 362.

Exceptions to the refusal of the court below to sustain the defendant's motion for judgment as of nonsuit have not been brought forward in his brief and argued, as required by Rule 28 of the rules of practice in the supreme court, and will therefore be considered as abandoned. State v. Stallings, 230 N. C. 252, 52 S. E. (2d) 901.

In Capital Case.—Although exceptions, in support of which no reason or argument is stated or authority cited, will be taken as abandoned in accordance with the provisions of this rule, nevertheless in the case of a capital felony, the Supreme Court will examine the matters to which those exceptions relate in its search for prejudicial error. State v. Roman, 235 N. C. 627, 70 S. E. (2d) 857 (1952).

Exception Too General.—An exception simply to the general failure of the judge to state in a plain and correct manner the evidence and declare and explain the law arising thereon is too general and cannot be sustained. Ellis v. Wellons, 224 N. C. 269, 272, 29 S. E. (2d) 884.

Citation of Cases.—The grouping of cases cited in a brief does not authorize the use of the names of such cases throughout the brief without giving the citation of such cases. Weaver v. Morgan, 232 N. C. 642, 61 S. E. (2d) 916.

Applied in State v. McMahan, 224 N. C. 476, 31 S. E. (2d) 357; Bailey v. Inman, 224 N. C. 571, 31 S. E. (2d) 769; Whitehurst v. FCX Fruit, etc., Service, 224 N. C. 628, 32 S. E. (2d) 34; State v. Biggs, 224 N. C. 722, 728, 32 S. E. (2d) 352; State v. Harrell, 226 N. C. 743, 40 S. E. (2d) 205; State v. McKnight, 226 N. C. 766, 40 S. E. (2d) 419; State v. Anderson, 228 N. C. 720, 47 S. E. (2d) 1; State v. Shackleford, 232 N. C. 299, 59 S. E. (2d) 825; State v. Carter, 233 N. C. 581, 65 S. E. (2d) 9 (1951); Commercial Solvents, Inc. v. Johnson, 235 N. C. 237, 69 S. E. (2d) 716 (1952); Dillingham v. Klizerman, 235 N. C. 298, 69 S. E. (2d) 500 (1952); In re McGowan's Will, 235 N. C. 404, 70 S. E. (2d) 189 (1952); Thompson v. Thompson, 235 N. C. 416, 70 S. E. (2d) 495 (1952); Williams v. Robertson, 235 N. C. 478, 70 S. E. (2d) 692 (1952).

Cited in Curlee v. Scales, 223 N. C. 788, 28 S. E. (2d) 576; State v. Friddle, 225 N. C. 240, 34 S. E. (2d) 5; State v. Murdock, 225 N. C. 224, 34 S. E. (2d) 69; State v. Gordon, 225 N. C. 241, 34 S. E. (2d) 414; State v. Reid, 230 N. C. 561, 53 S. E. (2d) 849; State v. Herbin, 232 N. C. 318, 59 S. E. (2d) 635; State v. Lamm, 232 N. C. 402, 61 S. E. (2d) 188; State v. Liles, 232 N. C. 622, 61 S. E. (2d) 603; State v. Minton, 234 N. C. 716, 68 S. E. (2d) 844 (1951); State v. Birchfield, 235 N. C. 410, 70 S. E. (2d) 5 (1952); State v. Williams, 235 N. C. 429, 70 S. E. (2d) 1 (1952); Chambers v. Chambers, 235 N. C. 749, 71 S. E. (2d) 57 (1952).

29. Appellee's Brief.

The appellee shall file 25 printed or mimeographed briefs with the clerk of this Court by noon of Tuesday preceding the call of the district to which the case belongs and the same shall be noted by the clerk on his docket and a copy furnished by the clerk, on application, to counsel for appellant. It is not required that the appellee's brief shall contain a statement of the case. On failure of the appellee to file his brief by the time required, the cause will be heard and determined without argument from appellee unless for good cause shown the Court shall give appellee further time to file his brief.

Editor's Note.—By amendment, effective July 1, 1951, the word "Tuesday" in line three was substituted for "Saturday".

32. Agreements of Counsel.

Applied in Russos v. Bailey, 228 N. C. 783, 47 S. E. (2d) 22.

44. Petition to Rehear.

(2) What to Contain.

Cited in In re Will of Franks, 231 N. C. 736, 57 S. E. (2d) 315.

(6) When Petition Docketed for Rehearing.

When Petitions Will Be Dismissed.—Petitions to rehear will be dismissed where the grounds of error assigned are substantially the same as on the former hearing, and no new facts appear, no new authorities cited, and no new positions assumed. Montgomery v. Blades, 223 N. C. 331, 26 S. E. (2d) 567.

VII. Rules Governing Admission to Practice of Law

4. Applications.

(a) Applicants for the March examination to be given during the years 1947, 1948, 1949, 1950 and 1951 shall file their applications with the Secretary on or before January 15 of the year in which the applicant applies to take the examination.

Editor's Note.—The above paragraph was added to Rule 4 by amendment duly adopted at a regular meeting of the Council of the North Carolina State Bar on October 23, 1947. As the rest of the rule is not affected it is not set out.

17. Comity.

In addition to all other fees required by these rules, each applicant for admission under this rule shall deposit with the Secretary the sum of $75.50 to be used as the Board may direct for investigation or otherwise.

Editor's Note.—The deposit required by the second sentence of the second paragraph of this rule has been increased from $50.00 to $75.50. As the rest of the rule has not been amended only the changed sentence is set out.

VIII. Comparative Tables

(1) TABLE OF COMPARATIVE SECTIONS.

(On page 70 of original, top of second column, the reference to "217(7) . . . 84-21" should read "215(7) . . . 84-21.")

(3) TABLE OF LAWS CODIFIED SUBSEQUENT TO 1919.

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