Six Political Decisions

SUPREME COURT DECIDES ALL THE OFFICE CONTEST CASES.

Fusionists Win the A. & N. C. R. R. and Western Criminal Circuit Cases; Democrats Take Public Printing, Keeper of Capitol and the Agricultural Board Cases.

The Supreme court will adjourn today. Three more opinions are to be filed this morning, then the spring term (1899) of the Supreme court of North Carolina will pass into history.

In one respect it has been a very remarkable term. A greater number of political cases than has ever before been known in a similar length of time have been tried and decided.

All these cases involved title to office, and arose from attempts of the last Legislature to either abolish the office or to elect a new officer.

The first of these cases was that of the State's Prison vs. W. H. Day. It was decided in favor of Day.

This decision was rendered about a month ago, and then the court stopped until yesterday when it handed down an even half dozen devisions in office-contest cases.

They are as follows:

Wilson vs. Jordan, from Buncombe, decided in favor of plaintiff. This suit was for the office of clerk of the Criminal court of Buncombe county. Wilson is the old Republican clerk.

Cunningham vs. Sprinkle, affirmed. This is the case of the new Agricultural Board against the old one. The new one wins.

Cherry vs. Burns, affirmed. Contest for the office of Keeper of the Capitol. Cherry was elected by the last Legislature. He gets the office.

Capital Printing Co. vs. Hoey, no error. The Capital Printing Company is the Barneses, who were Public Printers during the past two years. They lose.

Atlantic and North Carolina Railroad Company vs. Dortch, reversed. The old board of directors (Republican) will serve out their term.

Bryan vs. Patrick, reversed. Patrick is the Republican president of the Atlantic and North Carolina Railroad. He will stay in till his term expires in September.

Other opinions handed down yesterday were as follows:

Charlotte Fertilizer Co. vs. Rippy, petition to rehear dismissed.

Whitman vs. Dickey, reversed.

State vs. Rhyne, new trial.

Norwood vs. Pratt, motion for certiorari denied.

Trollinger vs. Railroad Co., motion to reinstate denied.

Collins vs. Bryan, new trial.

Collins vs. Pettit, petition to rehear dismissed.

Wilkinson vs. Brim, reversed.

Huss vs. Craig, error.

BRYAN VS. PATRICK.

Chief Justice Faircloth Endorses Dartmouth College Decision.

Atlantic and North Carolina Railroad Company (old board) vs. Dortch (new proxy), Decided in favor of the old board. Chief Justice Faircloth writing the opinion of the court says:

"This action is for the possession and control of the property of the Atlantic and North Carolina Railroad Company. From the agreed facts and admissions we are informed as follows: That said road was chartered in 1852 and said charter was amended in 1854-'5, wherein it is provided that the State is entitled to eight directors and the private stockholders to four directors; also that the Board of Internal Improvements, consisting of the Governor and his two appointees, shall appoint the eight State directors; that said board has continuously till the present time, annually, made such appointments; that said Board of Internal Improvements, of which the Governor is ex-officio president is to be appointed bi-ennially with the advice of the Senate, and is a corporate body, Code section 1688; that said Board of Internal Improvements was appointed by the Governor and confirmed by the Senate on March 8, 1897, and their commission were issued on March 9, 1898; that defendant Patrick in September, 1898 was duly elected president of the road for the term of one year.

"By an Act of the Assembly, ratified February 10, 1899, The Code section 1688 was declared repealed and a substitute therefor was adopted, making the Board of Internal Improvements consist of nine members to be elected by the General Assembly on joint ballot, incorporating the same, and requiring it to meet on the 24th of February, 1899.

"On February 12th, 1899 the Legislature elected a new board of Internal Improvements who met and organized on February 24, 1899 and ordered that the State proxy and the Board of Directors (defendants) be removed from their offices, and that said offices be declared vacant, and elected the plaintiffs to fill said vacancies.

"These new directors met on February 28, 1899, and elected the plaintiff, Bryan, president of said company and on the same day demanded of the defendants possession of the property, etc., of the road, which was declined.

"It will be observed that if defendants' office was for two years, it did not expire until March 9, 1899, and that plaintiff's claim rests on legislation in February, 1899. The single question then is, Has the Legislature power to remove one from his office and confer it on another? The plaintiff's counsel in his well considered argument, insists that: 'To be appointed biennially' means that the appointment must be made every two years, but that it does not fix any term of office, if we understood him. Suppose that the Legislature enacts that an official board (for it is not disputed that the members of the Board of Internal Improvements are officers) shall appoint A. B. bi-ennially to perform the duties prescribed in the Act, would it fail to occur to intelligent minds that A. B. has an office between any two such appointments? The long recognition of such a conclusion would at least raise a doubt of the plaintiff's construction. Do the duties of the Board cease as soon as it has made a bi-ennial appointment? Suppose the State proxy or any State director should prove unfaithful to the State's interest in the railroad at any time dring the two years, how would he be removed and his place be supplied except by the action of the Board, which it could not be according to the plaintiff's contention. The Act of 1897, chapter 122, section 1, expressly requires the Board to remove for cause and fill the vacancy in such cases, and the Act ratified March 6, 1899, does not repeal said section 1, but only amends it by eliminating the word 'Governor' from the Board. It appears to this court that 'to be appointed biennially' ex vi termini implies a two years term of office.

"The simple question of the power of the General Assembly to remove a legal incumbent from his office and confer it on another has been so much discussed, decided and settled, that it seems to have become axiomatic. The law is a legal standard, based on experience in the past and established to avoid uncertainty, that it may be known of all men. Facts seldom repeat themselves exactly, but in different cases they approach each other so closely that they fall into the same class and are necessarily governed by the same legal standard.

"This question of legislative power over the property of the citizen was presented to this court in 1805 in the interesting case of the University vs. Foy, 5 N. C. 58 (1 Murphy 58, 81.) By the Act of 1789, the Legislature granted to the Trustees of the University all the property that had escheated, or should thereafter escheat to the State. The Act of 1800 repealed the Act of 1789 and declared that any property, real or personal, that had in the meanwhile escheated and was held by the University should revert to the State as the property of the same, as if the Act of 1789 had not been passed. In the meantime, valuable property in the Wilmington district had escheated, and was sued for by the University. The court after elaborate consideration held that the University should recover and that the Act of 1800 was invalid as to the property. The opinion was so clear and strong that Mr. Webster, in his able argument in the famous case of Dartmouth College, cited and quoted from the opinion, and the court he was addressing adopted the same principle that had been announced in the above case against Foy. Some modernized suggestions have been made against the Dartmouth College opinion, but none of them have offered any reason or cited any authority to support their suggestions—presumably for the reason that none were convenient.

"In 1833 a similar question arose in Hoke vs. Henderson, 15 N. C. C. 1. This referred to property in an office. It is now admitted that an office is property, and that it is protected by the rule which applies to property of a more tangible character. It was held that the Act, ndertaking to deprive the legal incumbent of his office without his consent, was void.

"It may not be amiss here to remark that the people of North Carolina, when assembled in convention, were desirous of having some rights secured to them beyond the control of the Legislature, and those they have expressed in their bill of Rights and Constitution.

"The principle involved in Hoke vs. Henderson has been followed by a full list of decisions without exception to the present time. That principle is the basis of the recent decisions in Wood vs. Bellamy, 120 N. C. 212, and State's Prison vs. Day, at the present term.

"It has been suggested further, not by the counsel, that if one legislature can confer an office for two years and the officer cannot be removed by the next legislature without his consent otherwise than by abolishing the office, then it may confer an office for life, for 50 years, for 100 or 500 years. However, logical such a proposition might be in a monarchical form of government, it has no standing or logic under our government. When our people were organizing a new State, they did not leave themselves to any mere chance. They intended to relieve themselves from burdensome fetters and trammels, and did whatever was necessary for their safety and to promote the general welfare. This reasoning is not a mere question of construction. Passing by the unreasonableness of the proposition we are considering, we turn to positive law against it. It is declared in the Constitution Article 1, section 7: 'No man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services;' in Section 30: 'No hereditary emoluments, privileges or honors ought to be granted or conferred in this State;' and in Section 31: 'Perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed.'

"If therefore the apprehended danger should be attempted, which has not for a century, the fundamental provisions above mentioned would prove efficient. Take for illustration Section 14 of the same Article, which forbids unusual punishments, etc. Bail may be required, fines imposed and punishments inflicted, but if they are excessive, unusual or grossly unreasonable, a remedy will be found under such provisions of the organic law. It was found and promptly applied, for unusual punishment, in State vs. Driver, 78 N. C. 423.

"The truth is, under our system government, with checks and balances, in all the departments, the suggested danger is imaginary and may be dismissed.

"The reasoning in the cases we have referred to on this subject has been so often stated and so often written, that there is no need to re-write them in the present case.

"'An office is a sepcial trust or charge created by competent authority. If not merely honorary, certain duties will be connected with it, the performance of which will be the consideration for its being conferred upon a particular individual, who for the time will be the officer,' Throop vs. Langdon, 40 Mich. 673 (Cooley, J).

"'The term embraces the ideas of tenure, duration, emolument and duties.' U. S. vs. Hartwell, 6 Wall. 385, 393.

"The taking of the oath of office is not an indispensable criterion, for the office may exist without it. It is a mere incident and constitutes no part of the office. State vs. Stanly, 66 N. C. 59; Comm. vs. Evans, 74 Penn. St. 124, 139 (Sharswood, J.)

"'Like the requirement of an oath, the fact of the payment of a salary or fees may aid in determining the nature of the position, but it is not conclusive, for while a salary or fees are usually annexed to the office it is not necessarily so. As in the case of the oath, the salary or fees are mere incidents and form no part of the office.' State vs. Kennon, 7 Ohio St. 716; U. S. vs. Hartwell, 6 Wall. 385; Howerton vs. Tate, 68 N. C. 547.

"The duties to be performed by an officer may be changed and reduced and thereby the emoluments diminished for in those respects he takes the office subject to the power of the legislature to make such changes as the public good may require. Bunting vs. Gales, 77 N. C. 283. We see now that the compensation may become very small, as the legislature may deem proper for the public good, but the position still remains an office. Our opinion is that the plaintiffs are not entitled to recover for reasons stated in Wood vs. Bellamy, and State Prison vs. Day, supra.

Reversed.

No. 75—Atlantic and North Carolina Railroad Company, appellant against H. P. Dortch et al.

MacRae and Day and J. C. L. Harris for appellant; Simmons, Pou and Ward for appellee.

Faircloth, C. J. The facts here are the same as in Bryan vs. Patrick, at this term. The defendant was elected State's proxy by the new Board in February, 1899. This action is brought to restrain him from attempting to represent the State in the stockholder's meetings or interfering with the present State's proxy in any manner.

"In Bryan vs. Patrick we have held that the new Board was without authority to act in the premises and could not legally elect the defendants.

Reversed.

JUSTICE CLARK DISSENTS.

His Masterly Statement of a True Public Policy.

Mr. Justice Walter Clark, dissenting from the opinion of the court in Bryan vs. Patrick, takes the position that Hoke vs. Henderson does not apply, and that if stretched to cover this case becomes dangerous to the public welfare and should be reversed. He holds that to decide for the old board would be tantamount to granting a mandamus to compel the keeping of a contract by the State, a power not vested in the court. Justice Clark says:

"About two-thirds of the capital stock of the Atlantic and North Carolina Railroad Company is owned by the State of North Carolina, and the amendment to its charter enacted in 1854-5 provides (Sec. 4) that the stockholders shall elect four directors and the other 8 of its 12 directors shall be appointed annually and be removable by the board of internal improvements. The Code, Section 1688 provides that the board of internal improvement shall consist of the Governor ex-officio and "of two commissioners to be appointed annually by the Governor with the advice of the Senate, any two of whom shall constitute a board for the transaction of business, and in case of vacancies occurring in the board, the same shall be filled by the other members." The General Assembly, by an act ratified on the 10th day of February, 1899, repealed the above section, 1688 of the Code and substituted for it an enactment that the board of internal improvements shall consist of nine members, one from each Congressional district, to be elected by the General Assembly. On February 12th the new board of internal improvements were thus elected; they met on February 24th and by virtue of the aforesaid provision in the charter removed the State directors, thereby removing also the president as the charter requires that he be a director, and appointed 8 others as directors, who met on February 28th with 2 of the directors elected by the stockholders and elected one of their number president. These are the plaintiffs in this action, and the defendants are the 8 State directors appointed by the former board of internal improvement, together with one of the directors elected by the stockholders who is adverse to them. This action is for possession and control of said railroad and for the offices of president and directors, which the defendants refuse to surrender.

It is conceded, and indeed is beyond controversy, that the Legislature could repeal Section 1,688 of the Code and abolish the former board of internal improvement, and that, being legisiative offices the General Assembly by virtue of the constitutional amendment of 1875, can elect the new board of internal improvement itself. Ewart vs. Jones, 116 N. C. 570.

But it is contended that the old board of internal improvement having been elected on March 8, 1897, under an act providing for their appointment biennially could not be repealed by a new board till after March 8, 1899, and therefore the removal of the 8 State directors and the appointment of 8 others in their stead by the new board on February 24th, 1899, is null and of no effect, and for that the defendants rely upon. Hoke vs. Henderson, 15 N. C. 1 (decided in 1833). That decision holds that while the legislature can abolish any office whose tenure is not fixed by the constitution it can not change the occupants of the office if the office is not abolished, provided it is an office with pay. But it also holds that if no pay is attached the Legislature can change the officer without abolishing the office (p. 21) for the reason therein given that where there is any pay attached the officer has a private interest in the office to the extent of his emoluments, (p. 18) and his right thereto is property of which he cannot be deprived unless the office is abolished.

Now under Section 1688, the Governor serves ex-officio and without compensation, on the board of internal improvements, it is no part of his duty as Governor conferred on him by the constitution, but simply an honorary appointment conferred on him by legislative enactment, and therefore under Hoke vs. Henderson it is clear such duty can be taken from him, not only by abolishing the office of director of internal improvement, but by legislative enactment even when the office is continued. But the other two directors get three dollars each day they are in session, and as it appears from the auditor's report that on an average this board sits only one or sometimes two days per year and therefore has at most a salary of $6 per year, it is claimed that the Legislature was powerless to abolish the old board and substitute a new board of 9 elected by themselves to take charge of this great property of the State, till after the term of the two old directors had expired. It is extremely improbable that the old board would have held another meeting before March 8, or that they have lost one cent of emolument, which alone Hoke vs. Henderson protects, yet for that possibility of that infinitesimal salary we are asked to set aside a solemn act of the Legislature in providing for the management of a great State property. It is true that if the salary and not the public interest is the test, a small salary is as sacred as a large one, but this emphasises the logical result of the doctrine that the salary of the officer takes precedence of the right of the people to change the control of their State institutions.

Let us look this proposition squarely in the face: The statute (Code, Sec. 1688) directed the appointment of these two directors biennially, conferred on the board the power to fill up vacancies occurring in their own body and to appoint the directors (Sec. 1715) for the State in all corporations in which the State shall hold stock, and "shall have charge of all the State's interest in all railroads and canals and other works of internal improvements, and shall also all public buildings which are the property of the State."

The charter of the Atlantic and North Carolina railroad also provides that the 8 directors on the part of the State shall be appointed by the board of internal improvements. Now, if by reason of their receipt of a compensation averaging three dollars per year, the directors of the board of internal improvements are beyond legislative change until after the lapse of their term of years, then if the legislature had written in the act "50 years" instead of "biennial" as the term of office, inasmuch as a part of their office is to fill up vacancies in their own body from time to time, and the appointment of directors for the State by them is provided in the charter of the railroad company, it follows that for fifty years a self perpetuating body could in any way control the State's interest because the members thereof have a salary of $3 per year and hence have a "property" in their offices, though it would be entirely otherwise and the incumbents could be changed at the will of the Legislature, if this onerous duty (usually one session per year) had been devolved upon its members without pay.

If this is a correct interpretation of "Hoke vs. Henderson" the absurdity of that decision is so palpable and its direct conflict with provisions of both State and Federal constitutions is so clear that it should not be deemed authority for a moment, yet it is upon this construction, with its inevitable reductio ad absurdum that rests the right of the defendants to set at defiance the will of the people, as expressed by their chosen representatives, in reference to the management of a property in which as appears from the record the State has invested $2,000,000. The $2,000,000 the people have invested in the property is outweighed by the $3 per year which two officeholders have been receiving, and of which "property" it is said they must not be deprived!

Justice Clark then cites that under this holding the Legislature might by affixing a merely nominal salary to an office and making it for life or 100 years deprive the people of the power to change it indefinitely. He contends that such is not a just construction of Hoke vs. Henderson which was decided just after in the decision the Dartmouth College case it had been declared that a charter was a contract not a privilege; he cites that against the result of that dec-
has since protected herself by constitutional amendment. He continues: "Since the foundation of the decision is the contract for the salary, it necessarily follows that the true construction of Hoke vs. Henderson, is that if the officer is removed without abolishing his office, his grievance is for breach of the contract for 'the transfer of the emoluments" as is expressly said (p. 22) and as by virtue of 11 amendment to the constitution of the United States the State can not be sued and forced to perform any contract whatsoever the officeholder has his sole remedy by petition in the Supreme court under article IV, section 9, of the Constitution of North Carolina. The only property of which the defendant could be deprived since the decision held that it did not apply to offices without a salary) is the contract of the State to pay a salary and to grant a mandamus against the State to restore the officer that he may draw his salary would be to do by indirection what the court cannot do directly, to-wit: give the removed office-holder judgment against the State for the emoluments of office."

* * * * * *

"There is this striking difference between Hoke vs. Henderson and cases like the present and State Prison vs. Day (at this term) which has not heretofore been mentioned. In Hoke vs. Henderson, the defendant was clerk of the Superior court, he received no pay from the State and his only emoluments were fees from individuals for services to be rendered in his office and the court may have thought that the only way for him to get them was to remain in office. But in cases like the present and the Day case the salary comes entirely from the State and to put the officer back after the State, through the Legislature, has passed an act which removes him is in effect an action against the State to compel the State to pay him a salary and for the courts (as said above) to do by indirection what they are forbidden to do directly. Henderson's was a county office and counties can be sued. The officers removed in this case and in the Day case are State officers and to reinstate them is in effect a judgment against the State which no court has power to render.

If this is to continue to be a government "of the people and for the people" it is of the last, of the highest and most solemn importance that the will of the people as to government matters shall be expressed by their representatives in the law-making department of the government and that when so expressed the action of the Legislature shall be subject to review in every instance and in all matters by the people themselves through the next or any succeeding Legislature, and no Legislature can postpone the review of their conduct by filling an office or doing any other act that is fixed beyond change by the succeeding Legislature. The Constitution alone can place limits upon the legislative power. The Constitution nowhere restricts the power of a Legislature to review, repeal or change the action of any preceding Legislature in any particular. * * * If a construction can be placed upon "Hoke vs. Henderson" which will limit the freedom of each Legislature to review, repeal or change any action of a preceding Legislature because it may interfere with the salary of an office created by legislative enactment, then either that construction should be rejected or the decision itself overruled as has been the fate of many another. Hoke vs. Henderson is no more sacred than any other decision. The

(Continued on Third Page.)

NOTICE TO CREDITORS.

North Carolina,
Wake County.
In the Superior Court.

John Ward on behalf of himself and other creditors of the North Carolina Car Company vs. The North Carolina Car Company.

In the above entitled cause an order was entered at the April term of 1899 of Wake Superior Court that the creditors of the North Carolina Car Company shall have until the first day of June, 1899, to make themselves parties to said cause before the undersigned as referee, to whom the same has been referred to ascertain and report the amount due to each creditor and the preferential rights or liens (if any) in respect to the assets of said Company.

Notice is accordingly hereby given to all creditors who have not previously done so to make themselves parties before the undersigned on or before the 1st day of June, 1899.

R. T. GRAY, Referee.

May 9, 1899. 2w

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Train leaves Apex for Angier daily (except Sunday) with comfortable coach, upon the arrival of the southbound S. A. L. local passenger train.

Train leaves Angier daily (except Sunday) in time to connect with S. A. L. northbound local passenger train for Raleigh.

GEO. E. LEE,
Superintendent.