

### FIXED BY TAX Supreme Court Overrules

### FIXED BY CONSTITUTION

Holds That Automatically Capitation Tax is Fixed by Property Tax Rate and That the Supreme Court was in Error When It Rostered a Decision Contrary to This in a Similar Case in 1897.

There has been some fear that because of incorrect figures in the Revenue Act of 1911, in which the equation was not maintained between the property tax and the poll tax, \$1.35 being used in place of \$1.25, that the public schools of the State would lose large revenues, estimated at about \$200,000. This fear is dispelled, however, by the decision of the Supreme Court in the matter, handed down yesterday, in that the entire court joins in an opinion that automatically the State Constitution fixed the poll tax at \$1.25 when the property tax rate was made 45 cents on the \$100 valuation. To obtain a decision on the matter and to have the rate of \$1.25 placed on the tax blank, Governor Kitchin last week instituted suit that a mandamus issue to require State Auditor Wood to insert \$1.25 in place of \$1.35, the latter figure being in the Revenue Act of 1911, evidently by inadvertence.

The case was docketed in Wake Superior Court and was heard immediately by Judge J. W. Daniels, who is the resident judge of this district, in chambers at Greensboro, where he was holding court. The appeal in the case was advanced by the Supreme Court and was heard on Tuesday on briefs. Yesterday the decision was announced, it being that \$1.25 should be used in place of \$1.35. The decision reverses that of the Supreme Court in the similar case of *Russell vs. Ayer* in 1897, when Justices Clark and Douglas had dissented from the majority opinion. In the present opinion the position of these two justices is sustained, and by the unanimous vote of the court. The decision made is a correct one, and rests upon the bedrock of the Constitution. The opinion, written by Justice George H. Brown, is as follows:

**Capitation Tax is \$1.25.**  
Supreme Court of North Carolina—February Term, No. 214, *Wells v. W. W. Kitchin*, v. W. P. Wood, State Auditor.  
Proceedings in mandamus heard by his Honor Judge Daniels, at Chambers, April 5, 1911. The respondent demurred to the petition. On the hearing the demurrer was sustained. Plaintiff appealed.

The facts are stated in the opinion of the court.  
Attorney-General T. W. Bickett and Associate Attorney-General G. L. Jones for Petitioner; Benj. F. Dixon for Respondent.  
Brown, J. This proceeding is instituted by the petitioner against the Auditor of this State to obtain a peremptory mandamus commanding the Auditor to prepare forms for assessing and taxing property for taxation by the assessors of this State under the Constitution and the Revenue Act of 1911, chapter 46, Public Laws of 1911, fixing the capitation tax at one dollar and thirty-five cents, and commanding the Auditor to transmit to the assessors of each county, as required by law, the Revenue Act of 1911, chapter 46, of the Public Laws of 1911, fixed the capitation tax at one dollar and twenty-nine cents, and the total property tax at forty-five cents ad valorem on every one hundred dollars value of real and personal property.

In sustaining the demurrer, his Honor very properly followed the decision of this Court in exactly a similar case, *Russell, Governor v. Ayer, Auditor*, 129 N. C. 159.

That the Governor wrongfully presents a proceeding of this character against the Auditor to compel the performance of a mere ministerial duty is held by all the Justices in that case, but the court was divided upon the question of the propriety of granting the relief prayed.

The majority of the Court were of opinion that in failing to observe the mandate of the Constitution in fixing the poll tax, the Constitution was violated, and the Revenue Act for that year was rendered in all its parts null and void.

The matter is very fully discussed in the opinion of the Court by Justice Montgomery and the concurring opinion of Justice Furches, and in the two dissenting opinions of Justices Clark and Douglas.

With entire deference for the views of the majority we have reached the conclusion that Sec. 1 Art. V. of the Constitution of this State is mandatory, self-executing and leaves nothing to the discretion of the law-making power.

Its plain mandate is that the General Assembly shall levy a capitation tax on every male inhabitant of the State which shall be equal to the tax on property valued at \$100 in cash.

As said by the Attorney-General— "In the execution of this command the General Assembly acts in a purely ministerial capacity. Its function is executive and not legislative. It is made the agent, the accountant of the Constitution, with directions to make a calculation and record it." Although a Constitution is usually a declaration of the fundamental law serving either to command or restrict the creatures, it is not only within the power of those who adopt a Constitution to make some of its provisions self-executing, but it is within the power of those who adopt a Constitution to make a calculation and record it.

As to whether a particular constitutional provision is self-executing seems to be one of the questions gathered from the instrument itself

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and determined by the language used and the purposes intended to be carried out.

The provision in our organic law is complete in itself, needs no legislation to give it effect, and no special means for its enforcement.

Provisions of that character are regarded as self-executing. *Groves v. Slaughter*, 15 Peters U. S. 449; *Davis v. Burke*, 119 U. S. 399; *Newport News v. Woodward*, 7 Am. & Eng. Ann. Cases, 627, and cases cited in notes.

Touching this subject, the Illinois court says: "Where it is apparent that a particular provision of the organic law shall go into immediate effect, it is complete in itself, needs no legislation to give it effect, and no special means for its enforcement."

It is too plain for argument that in our Constitution the property tax is the standard of valuation and by it the poll tax must be measured. When the former is fixed by the General Assembly the latter becomes automatic, so to speak.

It adjusts itself, and is arrived at by multiplying the tax on one hundred dollars of property by three. The Auditor can neither add to it or subtract from it.

We must credit the General Assembly with the purpose to conform its legislation to the plain mandate of the Constitution.

Doubtless it intends to do so, but by some oversight when it added two cents more on property for school purposes, as the legislative history of the act shows, it omitted to add six cents to the poll.

But, fortunately, no legislation is needed to correct the error. It will correct itself. The Legislature has levied a poll tax and provided machinery for its collection, but that tax lacks six cents of meeting the unambiguous requirement of the Constitution.

A capitation tax having been levied and machinery for its collection provided, we see no good reason why the amount of such tax. The courts shall not compel the taxing officers to observe the plain letter of the organic law.

In the recent case of *R. R. Co. v. Commissioners*, 143 N. C. 225, same

principle was applied. The court held that the tax was valid, and that the officers were not liable for collecting it.

The majority of the Court were of opinion that in failing to observe the mandate of the Constitution in fixing the poll tax, the Constitution was violated, and the Revenue Act for that year was rendered in all its parts null and void.

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## SHOT FOUR TIMES BY NEGRO HOBO Freight Conductor Probably Fatally Injured

### DETAILS OF THE TRAGEDY

Injured Man Now in Salisbury Hospital With Chance for His Life—Had Ordered Two Negro Hobos Off Train—Was in Charge of Freight No. 112, the Negroes Fled—Outrage Occurred Early Yesterday Morning.

(Special to News and Observer.)  
Greensboro, April 12.—Conductor H. C. Bell, of freight No. 112 of the Southern, was shot four times by a negro hobo who had ordered off his train last night about midnight. The doctors say he stands a chance of recovery.

The freight, southbound, passed Greensboro between 9 and 10 o'clock and it was soon after leaving Jameson that the conductor discovered two negroes attempting a ride on the train. He ordered them off and one of the pair pulled a revolver and fired at the trainman five times, four of the shots taking effect.

The negroes remained on the train until it neared High Point when they dropped off and disappeared. The negro who did the shooting was described as a yellow, medium sized fellow, and his companion was very thin. The wounded conductor was carried on to Salisbury and placed in the Stokes-Whithead hospital. He is a married man having a wife in Spencer.

A FULLER ACCOUNT.  
Encouraging News From Salisbury is That Conductor Henry C. Bell Recovered. (Special to News and Observer.)  
Spencer, N. C., April 12.—Following a fierce battle with pistols on the top of his own freight train Captain H. C. Bell was brought to his home in Salisbury early this morning with two bullets in the upper part of his thigh and with a slight wound in the stomach. He was later in the day removed to the Stokes-Whithead sanitarium in Salisbury for treatment.

In charge of a southbound freight train Captain Bell discovered the dark form of some one on top of the train when, at a stop near High Point, taking his lantern he mounted the train and walked from the rear towards the front while the train was running at a fair rate of speed. When near the engine he flashed his lantern and the conductor saw two large negroes. He halted them and asked what they were doing on the train. Just at this moment one of the negroes opened fire on the conductor.

One ball struck him in the stomach and glanced doing but little injury. The second and third ball took effect in the thigh, the first of which is still imbedded in the fleshy part of the limb.

In self-defense the conductor returned the fire with a pistol which he had procured from the engine of the train. Being at a disadvantage on account of the darkness it is not known whether or not any of the shots from the revolver of the conductor took effect on the negroes.

Game Man He Is.  
A physician at High Point made a preliminary examination of Captain Bell's injuries and he was allowed to bring his train into Spencer after which he was taken to his home by his wife. It is thought that the shooting will prove fatal, though he had a particularly close call.

An Exciting Experience.  
The exciting incident of the most exciting through which the conductor is called upon to undergo and came near proving fatal. Captain Bell's physician states that he is doing well tonight and still recovering. His condition is encouraging.

Never Out of Work.  
The Dr. King's New Life Pills. Every pill is a sugar-coated globe of health that changes weakness into strength, languor into energy, brain-fog into mental power, curing constipation, indigestion, biliousness, malaria, only 25c at all druggists.



## The Mebane Line

That's the Kind I Want!

WHEN you go to housekeeping or re-furnish your house, bear in mind The Mebane Line of Springs, Mattresses, Pillows and Cots.

You cannot go wrong. They are covered by this Broad Guarantee.

Buy a "Majestic" Spring and a "Kingsdown" Mattress from your dealer. Sleep on them for 60 nights. At the end of that time you are entirely satisfied, return them and your money will be cheerfully refunded.

Here are some points for you to consider. "Majestic" Springs are made of 117 coils of highly tempered steel wire and conform to every curve and movement of the body. They are perfect in construction and are built to last a lifetime. The surface is absolutely smooth; no sharp points to tear the mattress or bed clothes; noles, and never sag at the edges or sink down in the middle, whether you are light or heavy in weight. For wood or iron beds.

Our "Kingsdown" Mattress is just as good as our Springs. None better made—at any price. Its uniform layers of sanitary white cotton felt make it light, soft, springy—conductive to perfect rest. Holds its shape always. Never gets mushy or lumpy in spots. Made to stand many years of constant use.

The Mebane Line of bedding, for cottage or mansion, embodies many new and original features and offers big value for the money. It gives perfect satisfaction because the high quality is always maintained. When you buy, don't be satisfied with anything except the best—that is Mebane. It is full of genuine merit and "honest all through". Prices within reach of all. Ask your dealer about The Mebane Line.

Mebane Bedding Company, Mebane, N. C.

## NO CARRIER'S MAIL NOW FOR SUNDAYS Window No Longer to Be Opened to Callers

TRANSIENTS GET THEIR

Plan Indorsed by Every Active Minister and Many Leading Business Men in Raleigh—Regulations Issued by Postmaster Briggs Concerning Sunday Mail Toll How Letters May Be Obtained in Emergency Cases, on Written Notice and by Special Delivery.

The postoffice in this city will hereafter observe Sunday as a day of rest. Regular mail will not be delivered on Sunday and the window will not be open for the delivery of mail.

This announcement was made by Postmaster W. G. Briggs yesterday upon receipt of the necessary instructions from the department at Washington. He stated that the plan for Sunday closing was endorsed by every active minister in Raleigh and by many of the leading business men.

Numerous large and small postoffices, including such as Denver, Detroit, Washington and Richmond, now have no delivery from the streets Sunday afternoon. Eighty cities work every Sunday at present and this closing will give all of them one day of rest out of seven and will considerably ease the Sunday work of the clerks.

Mail will be deposited on Sundays as usual thirty minutes before every train scheduled to leave for all night and there will still be a collection of mail from the street letter boxes Sunday afternoon. Eighty cities work every Sunday at present and this closing will give all of them one day of rest out of seven and will considerably ease the Sunday work of the clerks.

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## A BAD NEGRO ARRESTED

WAS WANTED FOR BRIBERY AND OTHER FELONIES—JIM McDUGGLE'S MANY CRIMES FOR WHICH HE MUST NOW ANSWER

(Special to News and Observer.)  
Rocky Mount, April 12.—Wanted for highway robbery, burglary and breaking in, and violating the State prohibition law, Policemen Taylor, Bartholomew and Harrington last night apprehended and captured a negro badly wanted in this city, and they have sworn evidence that he has been guilty of a half dozen crimes of more or less serious nature. The negro taken is Jim McDuggle, and he is one of a gang that has been taking in this section for several months. There are five negroes already that are serving sentences with the road force and from the evidence in the hands of the police the negro taken last night is one of the ring-leaders of the gang. This negro, there is evidence is the one that robbed the window of the Daughtridge Supply Company and Joyner & Rowland, by breaking the glass and running his hand inside. There is evidence that he was one of three that stole a quantity of goods from the Atlantic Coast Line packet freight and robbing several cars. He is wanted for a holding up and robbing on the public highway.

Death of W. E. White.  
After an extreme illness of several weeks, and having been an invalid for more than fifteen years, Mr. William E. White died at four o'clock this morning at the home of his sister, Mrs. George Robbins, Jr., on Pearle street. Mr. White was thirty years old and while for a major part of his life a sufferer, he had borne up well under his general manner and cheerful disposition won for him a large circle of friends and acquaintances. He was a consistent member of the First Presbyterian church, and a member of a prominent family in this part of the State.

The Wife's Work.  
(Lippincott's Magazine.)  
The man who makes his wife get up in the morning to start the fire at last saved enough money to buy an automobile. One day while going up a hill the machine stopped. "You'll have to get under it and push, Fannie," he said, "because I've got to stay here and guide it."

## Woman's Danger Periods Made Safe

By Lydia E. Pinkham's Vegetable Compound

The Change of Life is the most critical period of a woman's existence, and neglect of health at this time invites disease. Women everywhere should remember that there is no other remedy known to medicine that will so successfully carry women through this trying period as Lydia E. Pinkham's Vegetable Compound, made from native roots and herbs. Here is proof:

Natick, Mass.—"I cannot express what I went through during the Change of Life before I tried Lydia E. Pinkham's Vegetable Compound. I was in such a nervous condition I could not keep still. My limbs were cold. I had creepy sensations and could not sleep nights. I was finally told by two physicians that I had a tumor. "I read one day of the wonderful cures made by Lydia E. Pinkham's Vegetable Compound and decided to try it, and it has made me a well woman. My neighbors and friends declare it has worked a miracle for me. Lydia E. Pinkham's Vegetable Compound is worth its weight in gold for women during this period of life. If it will help others you may publish this letter."—Mrs. Nathan B. Groaton, 51 No. Main St., Natick, Mass.

Cornwallville, N. Y.—"I have been taking Lydia E. Pinkham's Vegetable Compound for some time for Change of Life, nervousness, and a fibroid growth. "Two doctors advised me to go to the hospital, but one day while I was away visiting, I met a woman who told me to take Lydia E. Pinkham's Vegetable Compound. I did so and I know it helped me wonderfully. I am very thankful that I was told to try Lydia E. Pinkham's Vegetable Compound."—Mrs. Wm. Boughton, Cornwallville, N. Y., Greene Co.

The makers of Lydia E. Pinkham's Vegetable Compound have thousands of such letters as those above—they tell the truth, else they could not have been obtained for love or money. This medicine is no stranger—it has stood the test for years.

For 30 years Lydia E. Pinkham's Vegetable Compound has been the standard remedy for female ills. No sick woman does justice to herself who will not try this famous medicine. Made exclusively from roots and herbs, and has thousands of cures to its credit. Mrs. Pinkham invites all sick women to write her for advice. She has guided thousands to health free of charge. Address Mrs. Pinkham, Lynn, Mass.

Alcohol Not a drop of it in Ayer's Sarsaparilla. No alcohol habit. No stimulation. Ayer's Sarsaparilla is a tonic, a regular tonic. It tones up, restores healthy activity. Consult your doctor freely about using it. Do as he says.

## Danderine

EVERYBODY CAN HAVE BEAUTIFUL HAIR NOW, and they don't have to wait weeks and months for results either. You will notice marked improvement after the very first application.

Danderine is quickly and thoroughly absorbed by the scalp and the hair soon shows the effects of its wonderfully exhilarating and life-producing qualities. It is pleasant and easy to use—simply apply it to the scalp and hair once a day until the hair begins to grow, then two or three times a week till desired results are obtained.

A lady from California writes in substance as follows: "I have been using your wonderful hair tonic for several months and at least I am now pleased with a wonderful mass of hair that has grown on my head in length; the hair is over twelve inches long."

Another from New Jersey: "After using each bottle I am happy to say that I have seen a load of hair as anyone in New Jersey."

This Great Hair-Growing Remedy can now be had at all druggists in three sizes, 25c, 50c and \$1.00 per bottle.

FREE! Danderine hair quickly will send a large quantity of hair to you. Write to the Danderine Co., Chicago, Ill., and we will send you a free sample of our hair tonic.

## KINSTON MAN COMES TO RALEIGH

Superintendent of Public Works Takes Position With Carolina Power and Light Company.  
Kinston, April 12.—Mr. Horace H. Hodges, superintendent of the electric light and waterworks plant of this city, has tendered his resignation to the board of aldermen to take effect not later than May 31st, and will leave for Raleigh to take the position with the Carolina Power and Light Company, a large corporation, that will furnish power and lights to cotton mills and other enterprises in North Carolina.

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them in the world. CASCARETS the biggest seller—why? Because it's the best medicine for the liver and bowels. It's what they will do for you—not what they say they will do—that makes CASCARETS famous. Millions use CASCARETS and it is all the medicine that they ever need to take.



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