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WEATHER TO-DAY
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DECISION IN FAVOR OF CAPT. DAY

Holds That Legislature Can't Establish an Office and Then Re-create It.

JUSTICE CLARK DISSENTS IN A VERY ABLE OPINION

Opinion of the Court by Judge Montgomery With a Concurring Opinion by Judge Furches—Capt. Day Recognizes New Board—Day and Osborn Talk.

Captain W. H. Day wins his suit.

That was the decision of the Supreme Court yesterday in an opinion written by Justice Montgomery. Justice Furches wrote a concurring opinion, while Judge Clark dissented from the decision of the court.

The court lays down the general proposition that you cannot take an office from an incumbent before the term to which he has been elected expired, by changing the name of the office and without changing the duties thereof.

There is diversity of opinion as to the general effect of the decision on the Abbott and other cases, where contests are being made for offices as a result of acts of the General Assembly. Not a few lawyers who read the decision expressed the opinion that the decision of the court does not apply to the case of Dr. Abbott.

Colonel Argo, who appears for Dr. Abbott, and who was also of counsel for Captain Day, said: "The decision is a broad one. It virtually decides the contentions of Dr. Abbott and Wimbish in their favor."

Logue Harris said the same thing. He declared also that the decision would continue Dr. Burns in office.

The dissenting opinion by Justice Clark is a remarkably strong one. It is much lengthier than the decision by Justice Montgomery. Justice Clark's opinion is bound to attract wide attention. It is certainly an able argument.

CAPTAIN DAY TALKS.

Captain Day was naturally in splendid humor as a result of the decision. He was one of the first to arrive at the office of the clerk of the court and carefully read the decision. When asked to make a statement, Captain Day said:

"I am in no hurry to take hold of the prison. I couldn't say when I shall do so. I recognize the new Board of Directors. They are my friends, and I anticipate pleasant relations with them in my official duties. I shall do nothing to injure the prison or the State. I am going to try and make the institution paying property. As to the disposition of the appropriations to the institution, I am not going to pay any bills until audited by the Executive Board."

COLONEL OSBORN TALKS.

Colonel W. H. Osborn of the Executive Board of the Board of Directors of the penitentiary was seen last night and said:

"Captain Day came out to the prison after the decision had been rendered. He told Mr. Newlands and myself that he would be glad to have the full Board of Directors act with him. I replied to Captain Day that we preferred to consult our counsel about that matter, and would let him know later. He told us that he wanted us to continue to run things. We may remain until the full Board meets and our future policy determined."

Mr. Newslands was present, and stated that Captain Day informed him that he recognized all the new members of the Board as part of the directory.

DECISION BY THE COURT.

The Opinion Was Written by Justice Montgomery.

North Carolina Supreme Court, February term, 1899, No. 145, Wake county. State Prison of North Carolina et al vs. W. H. Day, appellant.

Jas. C. MacRae, Argo & Snow and Thos. N. Hill for appellant; R. O. Burton and Shepherd & Busbee for appellees. Montgomery, J.

This action was brought under section 1 of an act of the General Assembly, ratified on the 15th day of February, 1899. The language of that section is as fallows: "That in addition to the remedy prescribed by The Code, sections 602 to 621 inclusive, The Board of Directors of the State's Prison of North Carolina, or the Executive Board thereof, or both, with or without the jointure of the State, shall have the right, in action for injunction or mandamus, to test in the courts the claims of any claimant or claimants to the possession, custody and control of the property of the State's Prison, and of the convicts therein confined."

The object of the statute then was simply to have the decision by the courts of this question: Who of the conflicting claimants is, or entitled, by law, to the possession and custody of the property of the State's prison and of the convicts therein confined? The claimants (so far as this record shows) are the plaintiffs, on the one side, and the defendant or the other. The right of any other person or persons that may be connected with the conduct and management of the State's Prison are not now before us for consideration. This court will not anticipate litigation between rival claimants for office, and if such litigation should occur, each case must be heard and decided on its merits on case properly constituted in the courts.

The Governor of the State, under the provisions of chapter 218 of the Acts of 1897, appointed John R. Smith superintnedent of the State's Prison for the term of four years and his nomination was consented to by the Senate. The compensation attached to the office was a salary of $2,500. After adjournment of the General Assembly of 1897, Smith resigned the superintendency and J. M. Mewborne was appointed by the Governor in Smith's place. On the first day of January, 1899, a few days before the General Assembly of that year convened, Mewborne resigned and the defendant, W. H. Day, was appointed superintendent to fill the vacancy. Day's nomination by the Governor was never sent to the Senate, nor did that body confirm the appointment. Day, under his appointment, took possession of all the property of the State's Prison, and the control of convicts.

This action was brought by the plaintiffs to recover of the defendant the property in possession belonging to the State and appertaining to the State's Prison, and to get the control of the convicts and to have the rights of the parties declared. In that way the plaintiffs sue to get a decision by the court, on the matter which it was desired to have settled by the Act of February, 1899.

The plaintiffs' alleged right of recovery is founded on the provisions of an act of the General Assembly ratified on the 26th day of January, 1899, to go into effect on the 10th day of February, 1899, as to its requirement for the delivery of the State's Prison and the convicts therein by the persons then in charge of the State's Prison, to the Board of Directors provided for in the act. As to the other provisions they went into effect from the date of ratification of the act.

Under the provisions of the last named act, the plaintiffs, claiming to be a Board of Directors duly elected and appointed by the General Assembly, allege that the office of superintendent has been abolished, that the property of the State's Prison, the control of the convicts and the conduct of the prison were vested in them by the act of January, 1899, and that therefore they are entitled to the possession of the property and control of the convicts, to the end that they might properly execute their trust.

And again, the plaintiffs allege that the office of Superintendent Day's tenure ceased upon the ratification of the act because he was not nominated by the Governor nor his appointment confirmed by the Senate.

The defendant avers that the act of January, 1899, though on its face it purports to abolish the office of superintendent of the State's Prison does not in law have that effect; that it simply transfers the duties and functions of the office of superintendent to the three plaintiffs, who allege that they compose an Executive Board, to be performed by them, and that such an attempt to deprive the defendant of his office, on the part of the General Assembly, is contrary to the provisions of the State Constitution, Article 1, section 17 (Bill of Rights) and to those of the Constitution of the United States, Article 15, section 1. The defendants further aver that the whole act of 1899 is void.

The general importance of the matter involved, and the appearance of both sides of counsel eminent in the profession and learned in the philosophy as well as in the details of the law, naturally prepared the court for elaborate and discursive argument (oral and by brief) and we were not disappointed in our anticipations.

A great deal of the learning which was displayed, however, was not new. Many of the questions dissecussed had been so often and so consistently decided by the adjudications of this court that they could not be held to be open questions; as, for instance: That such a place as superintendent of the State Prison, with its attendant duties, is a public office (Clark vs. Stanly, 66 N. C., 59; Hoke vs. Henderson, 15 N. C., 1: Wood vs. Bellamy, 20 N. C., 212: That an office is property and the incumbent has the same right in it as he has to any other property, except that he cannot assign it (Hoke vs. Henderson, supra; King vs. Hunter, 65 N. C., 603; Cotton vs. Ellis, 52 N. C., 545; Wood vs. Bellamy, supra; Wood vs. Elizabeth City, 121 N. C., 1): That the Legislature can, except in those instances prohibited by the Constitution, take away some parts of the duties of an officer and make an inequitable reduction of the officer's salary (Cotton vs. Ellis, 52 N. C., 545; Bunting vs. Gales, 77 N. C., 283; King vs. Hunter, 65 N. C., 603. But in those cases it is also held that the officer's entire salary can not be taken from him and thereby starve him, nor, could the Legislature select a particular officer and by a special law applicable to him alone, deprive him of any material part of his duties and emoluments: That the words in section 10, Article III of the Constitution of 1868 viz: "That the Governor shall nominate and appoint all officers whose offices are established by this Constitution, OR WHICH SHALL BE CREATED BY LAW AND WHOSE APPOINTMENTS ARE NOT OTHERWISE PROVIDED FOR, AND NO SUCH OFFICER SHALL BE APPOINTED OR ELECTED BY THE GENERAL ASSEMBLY, meant appointments not otherwise provided for in the Constitution: and therefore, the Governor had, under the Constitution, the general power of appointing to office (the exceptions being the cases where the appointmenks were otherwise provided for in that Constitution) to the exclusion of the Legislature (McKee vs. Nichols, 68 N. C., 429); but, that the words which we have quoted from article 3, section 10 of the Constitution, and which appear in italics in the quotation, being omitted in the present Constitution, it is clear that the convention of 1875 intended to alter the Constitution as interpreted in McKee vs. Nichols, supra, on that point, and to confer upon the General Assembly the power to fill offices created by statute. Ewart vs. Jones, 116 N. C., 570. Having disposed of the above mentioned collateral questions, which were the subject of argument in the case, interesting, more as matters of Constitutional and judicial history than as strictly applicable to the controversy before the court, by the citations of repeated decisions of this court, we can now come down to the discussion of the point the real controversy in the case, that is, Was the office of the superintendent of the State's Prison abolished by the act of the General Assembly, ratified January, 1899? We may say in that we have had no trouble in arriving at the conclusion that the office of superintendent is not an office created by the Constitution. Section 3 of the article XI of the Constitution, ordained, "That the General Assembly shall, at its first meeting, make provision for the erection and conduct of a State's Prison or penitentiary," and that provision, in our opinion, 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 as also may seem proper. The officers or their salaries and the distribution of their duties are all left with the General Assembly.

On the real question in controversy, the contention of the plaintiff is that the office of superintendent of prison was abolished by the act of 1899, because: (1) The act declared in so many words that the office was abolished; because (2) The responsibility and actual management of the prison are placed upon the Board of Directors and taken from the one-man power—that of the superintendent—and that the incumbent had an implied notice that the General Assembly might, when it saw fit, take that course; because (3), The act incorporating the State Prison; because (4), It increased the number of directors; because (5), It transferred the duties attendant upon the office to the Board of Directors for performance.

To aid us in arriving, &c., to follow:

To aid us in arriving at a correct conclusion in this case a recurrence to the true idea of the nature and character of a public office has been useful to us. In the text books it is thought that the word office, in its primary signification, implies a duty or duties and, seemingly, the charge of such duties—the agency from the State to perform the duties. The duties of the office are of the first consequence and the agency from the State to perform those duties is the next step in the creation of an office. It is the union of the two factors, duty and agency, which makes the office. In Clark vs. Stanly, 66 N. C., 59, the court said that "a public office is an agency from the State,: and the person whose duty it is to perform this agency is a public officer. The oath, the salary or fees are mere incidents and they constitute no part of the office." With that idea then of what an office is, has the office of superintendent been taken from the defendant and given to others by the act of Assembly? If the duties of the office were necessary and useful to the public, and they have been transferred to others who are exercising them as still necessary and useful to the public, and the State's prison, in behalf of which those duties are performed, is substantially the same institution as it was before the act of Assembly of January, 1899, was ratified, then, under all the decisions cited in this case bearing upon the point, the office of superintendent (defendant's property) has been taken from the defendant contrary to the law of the land—contrary to the provisions of the Constitution of North Carolina, Art. 1, sec. 17. If the institution, the State's prison, is the same substantially that it was before the passage of the act, if the purposes for which it was established are the same now as then, and if the subject matters over which the management and conduct extend be the same, then there is existing a contract between the State and the defendant as to his office, and it cannot be violated during his term. The State, through the General Assembly, might be satisfied that this management, under the Executive Board created by the directors under the act is the better plan, and the safer one for the public, yet that is only a matter of method of management, a choice between two modes (that is whether it is better for three to control than for one) and such a choice cannot be made until the defendant's term has expired. A new method of distributing the powers and duties of the government and conduct of the State's prison may be desirable, and the method undertaken to be adopted by the act of 1899, may be the best, and yet such changes cannot be made until the expiration of the contract with the incumbent. It has been suggested that if the State has not the power when it sees fit to abolish an office, and transfer its duties to others, that an incumbent might get into an office for a very long term of years (a term not amounting to a perpetuity, however, which would be illegal), and indifferently execute the duties of the office, but not so poorly as might amount to incapacity, and thereby inflict great injury on the interest of the public. The answer to that is that if such should be the case it would be the fault of the legislative branch of the government in fixing an unusual term of office, and not a matter reviewable by this court.

The conclusion of the case turns upon whether the State's prison is substantially the same institution that it was before the act of 1899; whether the purposes for which it was established are the same now as then, and whether the duties performed by the defendant were the same duties substantially which were transferred to the Board of Directors, and now being performed by the Executive Board under the act of 1899.

It is ordained in the Constitution that the State prison is to be used for the purposes of reformation and punishment, and that is the object of the institution now. The incorporation of the institution, if it be conceded that it was incorporated by the act of 1899, can in no sense affect the defendant's office if it has not otherwise abolished it. The bare incorporation of the institution would not affect or alter in any way the duties of the superintendent, or any other of the officers or placemen or employes, with the exception of the power given in the act of 1899 to the directors to sell or lease the lands or other property of the State prison, the duties and the powers in all respects of the Board of Directors, acting through the Executive Board as their head, are in all respects the same as the duties required of, and the powers conferred upon, the superintendent under the act of 1897, as the following analysis and compacison will show. Under the various subsections of section 5 of the laws of 1897, the duties of the superintendent are specified in detail as follows: (1) Under this subsection he is to receive and to have the custody of the convicts. That responsibility and duty are put upon the new Board of Directors and their agents under section 7 of the act of 1899. (2) Under this subsection it was made the duty of the superintendent to keep employed the convicts in the prisons and on the farms, and to hire them to others. Under section 7 of the act of 1899 that duty was developed on the board and their agents. (3, 4 and 5) Under those subsections the superintendent was authorized and required to purchase necessary articles of food and clothing for the convicts and to employ and take care of them, to sell the products and manufactured articles, to receive and account for the proceeds of the sale of articles produced and manufactured and to make a deposit of the same and to check it out. Those duties are transferred to the Board of Directors and their agents by section 6 of the act of 1899. (6) This subsection makes it the duty of the superintendent to take custody of the property of the State Prison and to protect the same. This duty is transferred to the Board of Directors and their agents by sections 6 and 8 of the act of 1899. (7) The superintendent is authorized under this subsection to appoint the subordinates, such as wardens, physicians, supervisors, overseers, guards and employees. These subordinates organized under the act of 1899 as wardens, physicians, managers, supervisors and overseers, are to be appointed by the Board of Directors through the Executive Board by sections 5 and 9 of the act of 1899. (8) Under this subsection there is imposed upon the superintendent the duty of rendering at the end of each year to the Board of Directors a statement of all financial transactions of the State Prison for the preceding year, together with an inventory of all property on hand and its value. Those duties are required to be performed by the agents of the directors, the Executive Board, under sections 5 and 6 of the act of 1899. Under chapter 219 of the Laws of 1897, the Board of Directors were a general supervising power; by the act of 1899 the Board of Directors, through the Executive Board, are clothed not only with a general supervising authority, but with all the functions and with all the duties of the superintendent, and with the power to distribute those functions amongst themselves or others.

If we have not fallen into error in the above analysis and comparison, and we feel confident that we have not, then, no new duties for the government of the State Prison have been imposed, nor have any new powers been granted to any persons except the power granted to the board of directors to sell or lease the lands of the State Prison, and which additional power we think does not alter the nature or the character of the institution. No function or duty that was formerly performed or imposed upon the superintendent is abolished. The functions and duties of that office are still necessary to the public welfare. They have not been abolished; they have been simply transferred to others. That cannot be done according to the law of the land. Wood vs. Bellamy, and Hoke vs. Henderson, supra; Cotton vs. Ellis, 52 N. C., 545. That three of the directors have been made the governing head of the institution under the name of the executive board, and that to them the duties and the functions of the office of superintendent have been transferred, does not change the application of the law. It is the same as if the duties of the office had been transferred to one person. It is not a valid argument to contend that the executive board can conduct the State Prison in a better and more satisfactory manner than can one man. It may be true in point of fact, and that plan can be tried at the end of defendant's term of office. The contract of the State with the superintendent must be kept. In Throop on Public Officers, Section 21, it is said: "Nor can the legislature take from the officer the substance of the office and transfer it to another, to be appointed in a different manner and to hold by a different tenure, although the name of the office is changed, or the office divided and the duties assigned to two or more officers under different names." That principle of law was announced in Warren vs. People, 2 Denio, 272, and also in People vs. Albertson, 55 N. Y., 50. The section in Throop, and the decisions in Warren vs. People and People vs. Albertson, supra, are in connection with offices created by constitutional provision. But that makes no difference in North Carolina. Under our decisions you cannot oust an incumbent of an office and continue the office afterwards, and this rule applies to offices created by the Constitution, as well as to those created by the Legislature.

It was not necessary for the appointment and nomination of the defendant to have been confirmed by the Senate. There was a vacancy due to the resignation of Mewborne. The Governor never makes a nomination to fill vacancies in office. He does that alone in all cases, as was decided in People vs. McIver, 68 N. C., 467.

The defendant is entitled to the possession of the property of the State's prison, to the control of the convicts as under the law of 1897, and to the right to execute the duties of the office of Superintendent of the State's prison.

JUDGE FURCHES CONCURS.

In a Separate Opinion He Discusses Argument in the Case.

Justice Furches, concurring, handed down a separate opinion which, in full, follows:

No. 145, State's Prison vs. Day, Furches, J., concurring.

While I fully concur in the opinion of the court (by Justice Montgomery), I hope I will be pardoned for briefly expressing my views upon this important question.

It is too plain for argument that the position the defendant held was a public office. I do not think this is denied by the plaintiff. This being so, he had a property in this office, that could not be transferred to another or others. This is the law of the State, and it has been so held by this court, in every case involving this question from Hoke vs. Henderson, 15 N. C., 1, to the present time, without a single exception. It is true that it is argued for the plaintiff that McDonald vs. Morrow, 119 N. C., 666, and Wood vs. Elizabeth City, are not in accord with Hoke vs. Henderson, but upon examination it will be found that this is not so. Hoke vs. Henderson is cited with approval in both these cases.

The act under discussion in McDonald vs. Morrow was the election law of 1895, and in that act it was provided that such appointments as those under consideration were void, and the court in considering the case stated that as they claimed to hold under that act, it must be held that they took subject to the terms of the act they claimed to hold under. There was no question presented in that case as to the repeal of the statute or the abolition of the offices claimed by the defendants. In Wood vs. Elizabeth City, 121 N. C., the plaintiff failed in his action upon two grounds: That the corporation under which he claimed to hold office had been abolished and a new corporation created out of new territory and new population to a very great extent; and for the further reason that he had abandoned his claim to office. Justice Clark wrote the opinion of the court in Ward vs. Elizabeth City, in which he cited with approval both Hoke vs. Henderson and McDonald vs. Morrow, and distinguished that case from Wood vs. Bellamy. So I repeat that there is not a case to be found in our reports that does not recognize the doctrine laid down in Hoke vs. Henderson, to be law in this State. It has been held ever since it was delivered in 1823, to be the leading case on this subject, and it is styled by Chief Justice Pearson as "that great mine of learning."

That case, and every case since that case, discussing the right of an incumbent to hold his office, recognizes the right of the Legislature to abolish a legislative office, and that when the office is abolished the right of the incumbent to hold is gone, because there is no office to hold. But all the reported cases from Hoke vs. Henderson down to and including Wood vs. Bellamy, 120 N. C., 212, hold that to have the effect of ousting the incumbent before his term expires, the office must be ABOLISHED. That it is not sufficient to declare it abolished when it is not abolished. That the office is intangible and consists in the duties of the office, and while these duties are combined, the office is continued. The discussion then came down to this: Are the duties of the office the defendant held ABOLISHED, or are they transferred to others?

In discussing this question I do not expect to enter into a discussion of policies that might influence me if I were acting as a legislator, nor do I expect to count the number of lawyers in the Legislature that passed this act, nor do I expect to impugn their motives, as it seems to be thought I will if I am of the opinion the act is unconstitutional. This kind of argument should have no weight with an independent judiciary. If this suggestion is true it convicts every judge that has ever occupied a seat on this court of being guilty of impugning the motives of the Legislature—Taylor, Henderson, Ruffin, Pearson and all their associates. If this were so, I suppose there would never be another act of the Legislature declared unconstitutional. I hope I may never be influenced in the discharge of what I consider my duty, by such considerations. I propose to regard this Legislature just as I would any other Legislature, and to deal with its legislation just as I would any other Legislature, just as I did the Legislature of 1895, and I agreed with the court in an opinion declaring a similar act passed by that Legislature unconstitutional. And in doing so I did not impugn their motives, nor do I suppose any other member of the court did. I suppose that Legislature thought the act of 1895, reviewed by this court in Wood vs. Bellamy, constitutional; and I suppose the Legislature of 1899 thought this act constitutional. But when it comes before us for review I cannot be governed in my opinion of the law by what they may have thought.

It is contended that if we sustain the defense and restore the defendant to his office there is danger ahead of us. That we might get a Legislature that would extend the terms of the office to ten, and even to twenty-five years. I do not think we are likely to have a Legislature that would be so revolutionary as that. But if we should, is this the forum to be appealed to for relief? The leading case of Hoke vs. Henderson, in which Chief Justice Ruffin delivered his great opinion, was a case in which Henderson, the defendant, claimed to have an office for life, and the court sustained his claim.

"It seems to me, &c.," to follow.

It seems to me that defendant's claim is looked upon with disfavor as resting upon an act passed by the Legislature of 1897. I don't know that it should be discredited on that account. But when it appears that the act of 1897 was but the re-enactment of this act of 1893, under which the party in possession of the penitentiary in 1895 (the same party that passed the act of 1893), held over in violation of the act of 1895; it does not seem to me that it should be discredited because it was passed by the Legislature of 1897.

If the object of the act of 1899 was simply to get rid of the office of superintendent, as contended, why was it that the Legislature did not simply abolish that office, and leave the institution to the management of the Board of Directors? They were there, and were substantially the same they were before the passage of the act of 1893, which created the office of superintendent.

If the object was simply to abolish the office of superintendent, why did they not do this and let the matter stand there? Why did they appoint twelve new directors and establish an Executive Board if their duty was to do the same thing the superintendent had to do?

Great stress is laid on the fact that these are to do what one did, and the "one-man power" is appealed to. Is this one-man power the question before us? It seems almost to be conceded that if the duties of the superintendent had been transferred to one man that the act would have been unconstitutional. What difference does it make to the defendant whether his office is given to one or three?

While we do not propose to discuss policies, this kind of legislation has a history in this State, to be learned from the records of this court and its reported cases. In 1871-'72 the Legislative power and the Executive power of the State were in the hands of different political parties. The Legislative power undertook to take charge of the penal, charitable and beneficent institutions of the State before the terms of those in office had expired. But they failed, as may be learned from Battle vs. McIver, 68 N. C., 467; Badger vs. Johnson, Ibid, 471; Nichols vs. McKee, Ibid, 429; Welker vs. Bledsoe, Ibid, 457.

In 1895 the Legislative power of the State was in the hands of one political party and the Executive power in the hands of another political party; and the Legislative power undertook to take charge of the institutions before the terms of the officers in charge had expired, and they failed. Wood vs. Bellamy, 120 N. C., 212. In 1899 the Legislative power of the State is in the hands of one of the political parties and the other political party; and the Legislature has again undertaken to take charge of these institutions before the terms of the officers have expired, and they must fail. The act considered in Wood vs. Bellamy, in express terms, abolished the office of superintendent, the Board of Directors, created a new corporation, provided for the reception of patients from Durham and Robeson counties, established an insane division in the penitentiary, and repealed all laws in conflict with that act. In fact, any substantial question involved in this case was involved and considered by the court in that case. The court constituted then as it is now, declared that the act was unconstitutional, by a full bench and without a dissenting voice. I must hold now as I did then, and I do this without impugning the motives of any one, as I suppose they thought the act constitutional.

JUSTICE CLARK DISSENTS.

A Strong Opinion in Support of the Legality of the Act.

Associate Justice Clark in a very able opinion, says:

"The management and control of the State Prison is essentially a governmental function. It is an indispensable part of the administration of the criminal laws of the State. No legislature can denude the State of that power by giving it away or by bargaining it away.

It is a startling contention of the defendant that, because the Legislature of 1897 placed the control of the State Prison in a superintendent, with vast powers and privileges, accompanied by a salary of $2,500, therefore a subsequent Legislature is powerless to resume control and change the management because that would deprive him of his pay. This is to make the incident of more importance than the subject, and the inalienable right of the State to control its own institutions subordinate to an office-holder, and for a salary.

"If the Legislature could, by creating a four year's term of office, put it out of the power of the next Legislature to assert State control of its most important institution and a branch of its administration of the criminal laws, it could, by making the term ten years, twenty-five years, or fifty years, have forbidden the people of North Carolina from touching the institution during these periods.

"If the Legislature of 1897 could confer the great powers they did upon the superintendent without power of repeal, they could have conferred greater powers, the sole and absolute control in every respect. To change this would necessarily continue the same duties in the hands of other parties; and the defendant's contention is that that would be to substantially to continue his office in other hands, and illegal. That is the proposition before us."

Judge Clark then recites the defendant's claims anent the control of convicts, the possession of the $200,000 worth of State property, the receiving of the $100,000 annually from the sale of products of State farms, the appointment of 169 place-holders in the State service "and other large powers, with no security to the State save a bond of $5,000," etc. Continuing, Judge Clark says:

"It is gravely argued to us that the Legislature could not, in the discharge of its general functions, change that system of government, because under the new act necessarily the same duties would be discharged by the directors and Executive Board and others, and the defendant would lose profitable employment.

"But governments are established for

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