VOL. XXVII. A SECOND OF

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Summer

RUFFIN, J.:

Ruffin, J.:

The relators were infants who filed their petition by their mother as next friend to have defendant Odom, who was clerk of the court, appointed receiver, to collect, receive and manage a certain fund due, them from an insurance company, the premium on their father's life. He was appointed receiver, collected the fund, became insolvent and fafled to turn it over. This suit was brought against him and his sureties on his efficial bond. The complaint was demysted to on the grounds that the facts alleged did not constitute a breach of the bond sued on, or show that the money mentioned was received by defendant "by virtue or color of his office" as clerk, see did it appears that the jurge of the Superior Court had jurisdiction to appoint a receiver of the estate of the relators.

Demurrer sustained. Plaintiff appealed.

SUPREME COURT DECISIONS.

The court says: By the order appointing Odom receiver the funds came into his hands as receiver and was never held by him in any other capacity: the only question is whether

ty; the only question is, whether the liability attaches to his sureties as clerk for the misappropriation of the fund

for the misappropriation of the fund as receiver.

The appointment of receiver is altogether distinct from the office of clerk, it imposes duties which in no wise apportains to that office and which do not fall within the covenants of the bond as clerk.

The rule in England is that a master is chart of the rule in England is that a master is charteness and as clerk.

The rule in England is that a master is charteness and cretons as clerk.

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The rule in England is that a master is charteness and in the appointments under the courts.

In Tennessee II was held in Waters with the sure-lies of a clerk and master mound not be liable for the loss of none had as re-Odom's bond as clerk were properly acquitted of all liability to the plaintiffs.
No error, Affirmed.

Stephenson vs. Seaboard and Roanoke tiff appealed.
R. R. Co.—Northampton. The court se This was an action of claim and de-

livery for the possession of 307 railroad June following, claiming that it conveyed to him the property sued for.
The description given to the property in the deed is "The following articles of personal property, to-wit: 300 rail-road ties to be delivered at Kee's crossing, on the Seaboard and Rosnoke railroad." The maker of the deed was in-troduced by the plaintiff and testified that at the time he made the mortgage he had cut a little over 200 ties, which were then in the woods; that he afterwards cut others, making in all that he placed upon the railroad 306, six of which were "culls." That none of the ties were delivered at Kee's crossing, but were delivered to defendant at unother point, under a contract made with it, before the execution of the mortgage to the plaintiff; that the defendant had paid for the ties without the knowledge of plaintiff. His Honor expressed the opinion that the deed was not sufficiently definite in its descrip-

tion to pass the property; plaintiff took a non-suit and appealed.

The court says: While it cannot be expected that a mortgage should set forth a description of the property con-veyed, with such certainty that it may be identified by the terms of the instrument, and without the aid of evidence aliunde to fit the description to the thing; still it is necessary that it should furnish some description of the property, accompanied with such certainty as will enable third parties, aided by inquiries which the deed itself suggests, to identify it.

At this season, various diseases of the bowels are prevalent, and many lines are lost through lack of knowledge of a safe and sure reniedy. Perry Davis Pain Killer is a sure cure for Diarrheea, Dysentery (Cholera Choisea Morbus, Summer Complaint, etc., and is perfectly safe.

Read he following:

Burning S. Y. March 2, 1881.

Lead he following:

Little And The State of the stomach Joseph Burdit.

Samon and Jan in the stomach Joseph Burdit.

In sery her modeled i know in for dysentery, excess morbus and grampe in the stomach. Have need it for fears until it sery sere every time.

JULIUS W. DER HOUSE W. DE HOUSE W. to identify it. The mortgage under which plaintiff claims, does not describe the property, nor is there any suggestion therein of evidence, which would enable a party purchasing to know that it was intended to be conveyed thereby. No error. Judgment affirmed.

Mauney & Son vs. Coit-Davidson.

This action, which has already been before the court upon defendant's appeal reported in 80 N. C., 300, has for its object the recovery of a balance due the plaintiffs for goods sold and delivered, and money advanced during the years 1874. Upon the finding of the lary the rourt gave judgment for the plaintiffs and defendant appealed.

The writing by Hows (the party to whom articles were furnished) dispensing with notice to him of the non-payment of the drafts, relieved the plaintiffs from the duty of advising him of the drawer's refusal, and their own total ignorance at the time of the This action, which has already been

own total ignorance at the time of the defendant's legal hability for the debt, dispensed with the duty of giving the notice to him, if indeed he, not being a party to the drawing, was in law, when

party to the drawing, was in law, when known, entitled to notice.

A note given by all the parties to pay for goods delivered would not extinguish the original undertaking like a bond or judgment taken for it, for the action might still be maintained for goods sold and delivered, provided they produced the note and delivered it up on trial or proved it was destroyed. When partners after dissolution gave their note for goods sold on which pay. their note for goods sold, on which payments were made and the note taken up and a bill of exchange for the amount due in it substituted by one of them only it was declared that on surrendering the bill, the action would lie on the original contract of sale.

The statute does not apply to those defense to the action merely. are clearly part of one continuing mu-tual account, which by the consent of the parties are to be charged therein whenever the same are to be adjusted. There is no error; judgment affirmed and case remanded for further proceed-

Bennett, et als., vs. Nicholson and wife

-Halifax. This is upon a question of damages, caused by defendants who built a dam below the plaintiff's mill, which caused an accumulation of water upon their water-wheel, which interfered with the working of their mill. The jury assessed the damages for no fixed period but at the rate of one hundred dollars for each year.

The defendants objected to the rencommit the alleged tort. The court gave judgment to both defendants and against the separate estate of the feme for the sum of five hundred dellers.

The court says: That evidence not the court says: A subsequent exebearing apon the question of the extention confers no sutherity to sell the
tention the actual injury caused by the same premises where there has been a-

dam and no question is made of the civil responsibility of each for the alleged tortions act, and no issue was eliminated from the pleadings admitting evidence to exempt the feme defendant Baported for the Crarlotte Observer by W. M. Busbee, of the Raleigh Bar. State and Rogers vs. Odom et als-Northampton. by reason of her coverture and want of freedom in the act, it must be understood that an equal and common liability rested upon both. Although coer-

cion is presumed it may he disproved.

No error. Judgment affirmed.

As at Fall term, 1880, plaintiffs in this action had a judgment for five hundred dollars against defendants of record. who appealed, giving an undertaking for the appeal with D. P. Moore and others as their sureties, and the said judgment was affirmed, and plaintiffs parties to said undertaking, not only for costs but for the amount directed by said affirmed judgment to be paid to them; the defendants resist the motion on the ground that it was the intention of the parties who signed the undertaking and those who took it only to secure to the plaintiff the costs of the appeal. The failure thus to limit their liability in terms, was owing to a mistake, or inserting the costs of the secure in the costs. advertence of the gentleman who prepared the instrument for their signa-tures; letters and affidavits being filed in support of these facts which are de-nied by plaintiffs. The court speaking through Ruffin, J. orders that as these matters of fact are raised the most

equitable course to pursue would be to submit the question to a jury, and it is so ordered. The plaintiffs will have judgment against defendants of record, for the amount of the judgment affirmed and the costs, and against the sure-ties on the undertaking for the costs

Johnson vs. Smith-Mecklenburg. ASHE, J.: Civil action tried before Eure J. at the Fall term, on demurrer. Action was brought on a promissory note for \$1,250, given for fifty shares of the stock of the South Carolina Land company.

Demurrer sustained and plaintiffs' counsel moved the court to state what grounds in the demurrer were sustain.

ed and which were over-ruled, to the end that plaintiff may amend as to any formal defect. Motion denied and plain-The court says; When the complaint only states that the stock at the time of filing complaint had no market value and plaintiff could not realize anything from them, a demurrer that complaint The plaintiff offered in evidence a mortgage given to him by J. T. Buffation should not be sustained, for the loe, 20th May, 1880, and registered 22nd stock may have had a market value prior to that time, and if at time of the

sale it had a market value, no matter how small, it was a sufficient consideration to support the sale. The 3d and 4th grounds should not be sustained for according to terms of contract admitted the stock was to be held as collateral security for the note given for the price, and the certificate for same was not to be delivered until the money was paid. It is to be inferred from the complaint that the certificate filed was for 50 shares of the identical stock which plaintiff alleged he owned at the time of sale, and that issued was a part of same. Though the certificate bears dates 9th February, 1880, they may have been surrendered by plaintiff and issued again in the name of the defendant.

When a defendant bargains for and purchases stock he recognizes the existence of the company, and so far as this case is concerned it is prima facie evidence of its existence and right to issue

The exception taken by defendant to the refusal of his Honor to specify, which were the causes of the demurrer he sustained is not tenable. There is no rule of practice which required the court to do so, while such a practice would not only be convenient to the party demurring, but would save labor to the appellate court. Error.

Barnheart, Executor, vs. Smith-Cabarrus.

Daniel Barnheart died in 1879, leaving a will properly admitted to probate, wherein the plaintiff was appointed executor and Eveline Barnheart, the widow, executrix, both of whom accepted the trust and qualified. The latter refuses to join in the action, and is consequently made a defendant with the others claiming adversely to the estate and with them resists the plaintiff's recovery. The complaint alleges mental incompetency of the testator to modify his previous contract of sale, or to make a valid conveyance of the land and that he was induced so to act through the fraud and falsehood prac-

Jury returned all issues in favor of plaintiff; defendant appealed. The court says: A party is not allowed to except generally to testimony severable into distinct parts, some of which are competent and others not, and afterwards single out and assign as error the admission of the incompetent parts.

tent parts.
All objections of a formal character, and such as might have been obviated, if urged on the examination of the witness, must be raised on such examina-tion or upon motion to suppress the deposition. It is the manifest purpose of the act of 1631, th. 205, to enlarge the operation of the former statute and ob-jection is not tenable to the reading of a deposition when it appears that the witness was "gone out of the State," or was at a greater distance than seventy-

five miles. The legal sufficiency of an instrument is involved in setting it up as a defense, and this is an issue to be determined on the trial. It is only when a counter claim is relied on that the plaintiff's failure to reply may afford ground for a judgment for a want of a replication, but not when the matter constitutes a

Where the court charged "that the law does not require a high degree of intelligence, but in order to the validity of an act of disposition it was necessary that the deceased should have fully understood what he was doing," there is no error, for the language used means only that deceased did understand and is in antagonism to a partial or imperfect apprehension of it.

No error. Judgment affirmed.

Peebles vs. Tate-Northampton. SMITH, C. J.: Plaintiff claimed title to the land in dispute under an execution sale, and cone endorsement on the execution showed that the land was sold on 7th November, 1874, and that Peebles was highest bidder and became purchaser,

having complied with the terms of the sale. Defendant in resisting offered to dition of judgment for damages accrued show that a previous execution was since the commencement of the action and for the sum against the remaining deviation of the presented coersold to one Stephenson, and that the sheriff's deed to him for same control of the husband in causing her to executed in December 1873. Evidence ruled out as inadmissible in present ac-tion. Verdict and judgment for plain-tiff. Defendant appealed.

tent of the actual injury caused by the obstruction in the stream was properly excluded. Where actual and not prospective damages have been assessed, and none are adjudged which did not in fact accrue before the trial, the question is, whether plainting are entitled to compensation for continued injury sustained up to the trial as well for that done since as before the institution of the suit. The damage is continued and proceeds from the same unlawful cause, the injured party should not us driven to successive scient for a redress which could as easily be afforded in a single one. Whisenhurst vs. Jones, 78 N. C.

Hughs vs. Newsome et als—Northamp-ton.

Where defendants both admit in their RUFFIN J.
joint answer that they had erected the This action is brought on the official

bond of Newsome as sheriff, given in 1872, in which the other defendants are the sureties. On the 19th May, 1873 plaintiff commenced an action of claim and delivery against one Capehart and on the same day an order issued to the sheriff commanding him to take the property, &c. The order was immediately executed, but the sheriff redeliv-

ately executed, but the sheriff redelivered the property to Capehart upon his giving an undertaking, not as the statute directs, but merely to save harmless and indemnify said sheriff from all loss on account of his having so restored said property. The action for claim and delivery pended until January term, 1878, when plaintiff had a judgment against Capehart, execution issued thereon and same was returned nulla bona. In September, 1879 this nulla bona. In September, 1879 this action was brought, because of the fail-ure of the sheriff to take such an undertaking as the statute directed be-

fore restoring the property.

The statute limiting the time in which actions shall be brought upon the bonds of public officers, to six years, relied on and sustained by his Honor.

The court says: Though the instrument taken by the sheriff was in direct violation of his duty and void on the ground. tion of his duty and void on the ground of public policy as being intended as an indemnity to a public officer for omitting to do that which the law as well as the public order of the court enjoined upon him to do, and his ta-king such an instrument was a clear breach of his bond which exposed him and his sureties to an immediate action, still if the action be not commenced within the time prescribed by law the plaintiff loses the right through his negligence. The default when once committed was absolute and complete and the statute begun to run at once.

Judgment below affirmed.

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How Shall She Preserve Her Health One who has long investigated this subject gives the result, and is happy to say that it is found in Woman's "Best Friend." It is adapted especially to that great central, all-control ing organ, the womb, correcting its disorders, and curing any irregularity of the "menses," or "courses." Dr. J. Bradfield's Memale Regulator acts like a charm in whites, and in sudden or gradual checking, or in entire stoppage of the "monthly courses," from cold, mental trouble, or like causes, by restoring the natural discharge in every instance. In chronic cases, so often resulting in ulceration, failing of the womb, its action is prompt and decisive, saving the constitution from numberless evils and premsture decay. Prepared by Dr. J. Bradfield, Atlanta. Ga. Price: trial sixe. 75c; large size, \$1.50. Forsale by all druggists. \$1.50. Foreale by all druggists.

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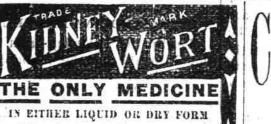
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FOR SALE.

BY Virtue of a decree of the Saperior Court of Catawba county, made in the case of P. C. Shuford and others, plaintiffs, vs. A. M. Poweil and others defendants at Spring Term, 1882, of Catawba county Superior Court, the undersigned, as Receiver, will sell at public sale, at the Long Island Cotton Mills, on MONDAY; the SHD DAY of JULY, 1882, the following valuable Property,

of JULY, 1882, the following valuable Property, to-wit;

The factory of the Long Island Cotton Mills, to-gether with 1612 acres land, including the entire water power of seven feet head, factory building 60x40, two stories high, flouring and saw mills, store and cotton houses, blacksmith shop and five tenement houses, and the following machinery:

1 picker, 1 36 inch double bester and lapper, 6 36-inch 14 top flat cards, rahway head: 2 drawing frames, 6 deliveries each. 4 ring frames (Bridesberry make), all in good order, 2 Danforth cap berry make), all in good order. 2 Danforth cap frames, 182 spindles, total number spindles 810, 1 Travis card grinder, bunch and baling press; also a large lot of old looms, pullies, sharting,

also a large lot of old looms, pulles, shalling, dec.

For more accurate and definite description of the property and the conditions of said saie reference is hereby made to the decree above referred.

TERMS:—Twenty per cent of purchase money cash and the balance in chall instalments of three months and six months, bond and approved security required of purchaser, or the Receiver is by said Decree, authorized to vary terms to suit purchasers. The Receiver is also authorized by said Decree to selsaid property at private sale, upon such terms a shall be agreed upon between him and purchase and he will entertain private bids utall day of said.

Persons wishing to examine said property wifind Dr A. M. Powell and Mr. Levi Shuford on the premises, either of whom will take plensure showing the came. Address

JOHN L. COHB, Receiver, jun8