CHARLOTTE DAILY OBSERVER, JANUARY 29, 1906

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SUPREME COURT DECISIONS

for a new trial for newly discovered syldince, the court never idiscusses the facts on such motion but simply awards or refuses a new trial.

BROWN vs. RAILROAD, appellant, from McDowell; new trial. The tending of witnesses by the de-fendant for the purpose of having their fees taxed as costs does not amount to the introduction of evidences within the meaning of the Superior within the meaning of the Superior Court rule 8, and does not take from the defendant the right to open and conclude the argument.

STANALAND, appellant, vs. RABON,

rom Brunswick: error. (Filed Dec. 12, 1905.) (1). The act of 1893, Ch. 22, was evi-lently intended to simplify the prodenity intended to simplify the pro-cedure in processioning cases and to appared a speedy and effective method of determining the true location of disputed lines and boundaries of lands as between their proprietors instead of requiring them to resort to the cumbersome, and sometimes intricate and castly remedy by suit to right and title

(2). In a proceeding under the pro-casioning act Laws 1893, Ch. 22, where n lame of title was raised in the lance of title was raised in the dings, the issue thus raised id have been transferred to the Court for trial, and the court erred in dismissing the proceeding.

ys. RAILROAD. appellant, (Filed Dec. 12, 1995.)

an action against a railroad for as for the alleged negligent killing of the plaintiff's intestate at a crossing where there was evidence to show that an engine of the defend-ant was backing at night toward a crossing near the depot and ran over ind killed the intestate, who at the ime was lawfully upon the track ondeavoring to cross it going to his home; that the engine was running backwards without lights one being stationed so as to keep a proper look out, held these facts fix the defendant with the responsibility for intestates death

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(8.) In an action to recover dam-

of plaintiff's intestate, plaintiff's in-ventory of the personal property of her intestate and her annual account as administratrix are inadmissible for the purpose of showing intestate's ca-pacity to carn and accumulate money. BPRINKLE vs. WEILLBORN, appel-lant, from Wilkes; affirmed. (1). In an action to set aside a deed for mental incapacity and fraud, under the finding the one of the de-fendants was a purchaser from his co-defendant for value without notice of the mental incapacity of the grant-of, and also without notice of any care wire being in service in the rives, not a wire being in service and also without notice of any ud of his co-defendant in procuring the deed, the plaintiff could not pro-sed further against the other de-fendant upon the theory that he was

liable for the value of the land less the amount paid by him therefor. (2). The contracts of idiots, lunatics and other persons non compos are denercally regarded, in the certain sense, as invalid.

(8). In regard to a contract entered Into by a person apparently same, be-fore the fact of insanity has been established, such a contract is at most only voidable and will not be

set aside when the other party to be affected by the decree of the court had no notice of the fact of insanity, has derived no inequitable advantage and the parties cannot be placed in statu quo. . (4). The mere fact that a man is

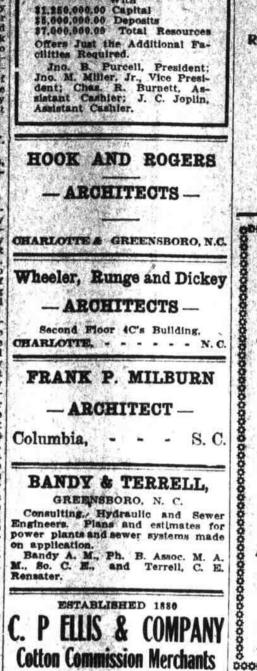
ing facts and conditions which so com-plicate the question of contributory negligence that il becomes one for the jury, even though there has been a failure to look or listen, and a travel-er may, in exceptional instances, be relieved of these duties altogether as when gates are open or sig-nals given by a watchman and the traveler enters on the crossing reas-onably relying upon the assurance of safety. prises using electricity for power were unable to move a wheel during the (8.) In an action to recover thing ages for the alleged negligent killing of plaintiff's intestate, plaintiff's in-ventory of the personal property of her ventory of the personal property of her intestate and her annual account as and the afternoon paper. The Daily

their lives, not a wire being in service in any direction from this point and trains are operated by giving orders to crews of certain trains to be delivered to crews of other trains meeting points, necessarily causing great delays in schedules. The Western Union and Postal Telegraph

Companies and the Southern Bell Telephons Company were heavy sufferers from the storm and at this writing it is impossible to mate the damage, though it is safe to put it away up into the thousands of dollars, Every available lineman in this part of the country has been employed and powerful efforts are being exerted to repair the damage and get things in running shape again as early as possible.

> THE MECKLENBURG ESSAY CONTEST.

(4). The mere fact that a man is of weak understanding, or is below the average of mankind in intellectual capacity, is not of itself an adequate for intestate's death.
(4). The mere fact that a man is of weak understanding, or is below the average of mankind in intellectual capacity, is not of itself an adequate for intestate's death.
(3). The act of 1886, Ch. '40, (Code Sec. 1842 of the Code) fixed the marital relations of former slaves, who were itving together as man and wite, providing that, those thus combilited at the date of the ratification of the act should be deemed to have law-fally married, with a provision for act wnowledgement before the clerk or



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knowindgement before the clerk or justice of the peace.
(2). The act of 1879 Ch. 73, (Code Sec. 1281, Rule 13) legitimates the plaintiff, the child of colored parents, who

was born before the first day of Jan-uary, 1868, and merely extended the child's right of inheriatnce to the estate of the father, which was before that restricted to the estate of the mother, but it does not transmit any title to the plaintiff, who is claiming the land in dispute as heir of an il-legitimate first cousin.

(3). Where plaintiff, who is a legitimate and is claiming under a collateral kinaman of her mother is excluded from any benefit under Rule 9 of the Code which refers only to a fineal descendant from a mother to ber illegitimate child and tits descendant's from to the child as her representative. (4). The last clause of Rule 9 of Chapter 28 excluded to from a real injustice is done to the grantee and no superior equity has intervent for the child as her representative. (4). The last clause of Rule 9 of Chapter 28 excluded the right to induce it to set aside the grantee is and no superior equity has intervent for the child as her representative. (4). The last clause of Rule 9 of chapter 28 excluded the right to induce it is as the property to an induce it is superior equity has intervent in the discretion of the court. (5). The remedy of a creditor is not is a fine as the property to an induce it is superior equity has intervent is and no superior equity has intervent is and no superior equity has intervent is the discretion of the court. (5). The remedy of a creditor is not is a clause of Rule 9 of the property to an induce it is a superior equity is an induce it is as a superior equity is an induce it is a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is as a superior equity is an induce it is asu (3). Where plaintiff, who is a legiti-

Chapter 28 excluded the right to inherit, as the representative of an ille-gitimate mother, any part of the es-tate of the latter's kindred, either

(5). The plaintiff, a legitimate, who does not claim directly from a brother or sister, or from the issue or heirs of either, but from an illegitimate first cousin, comes within neither the letter nor the reason of Rule 10 of Section 1251 of the Code.

(6). In an action of ejectment it makes no difference whether the de-fendant has any tille or not, for the plaintiff can succeed only on the strength of her own tille as being good against the world or good against the defendant by estoppel.

CRAWFORD vs. MASTERS, appellant, from McDowell; no error. (1). An issue should be directed to

the matter alleged on the one side and denied on the other. The judge may in addition to the issue submit questions to the jury pertinent to the matters in controversy, but he is not compelled to do so, and his refusal is

(2) In an action for the recovery (2) In an action for the recovery (3) and if the defendant wisnes to inscision as it any portion of the ocus in quo and put in issue the title o only a specific portion, he should o so in his answer.
(2.) In an action for the recovery of and the information of the recovery of of the recover

hand the judgment must follow and conform to the verdict in designat-ing the extent of the recovery, and must be rendered for the premises described in the complaint.

*DOPER vs. RAILROAD, appellant, from Caswell, new triat (1) Both the railroad when ap-proaching a public crossing and the traveler on the highway are charged with the mutual duty of keeping a current lookout for danger, and the degree of diligence to be used on eith-er side is such as a prudent man would exercise under the circumstances of the case in endeavoring to perform his duty.

In an action for damages for alleged negligent kitting of plain-interates, an instruction that re-ed the traveler of all obligation ask and listen when there had been allure on the part of the defend-o give the ordinary signals, where was an imobatructed view, is er-was an imobatructed view, is er-ous, and the fact that the court obser portions of the charge im-on the plainting the obligation cosk and listen whenever the view

Evidence lending to show th tentate was in a covered way at he drove on the crossin any stop whaten

the condition of the parties, the presumption being stronger or weaker according to the position or condition of the parties with respect to each other. (6). A presumption of fraud is

raised from a transaction with a non our compos mentis without the aid of any the evidence of actual imposition, from the very nature of the transaction. (7). In an action to set aside a deed for mental incapacity and for fraud, the finding of the jury that the grantor did not have sufficient mental capacity and that the grantee

particulars.

antee has sold the property to an in-nocent purchaser, for in such case the proceeds of the sale are as available as the property itself. The fraudu-lent guarantee become chargeable with Price only 50c. the proceeds derived from the inno-

the proceeds derived from the inno-cent purchaser, but the property it-self is not, and a personal judgment may be obtained against him. (9). In an action to set aside a deed for mental incapacity and for

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when especially asked to do so in , a prayer. (14). A person has mental capacity sufficient to contract if he knows what he is about and the measure of ca-pacity is the ability to understand the nature of the act in which he is en-gaged and its scope and effect, or its nature and consequence, not that he should be able to act wisely or dis-creety nor to drive a good bargain, but he should be in such possession of his facilities as to enable him to We Offer, Subject to Sale of

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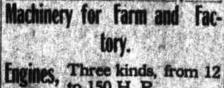
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