SUPREME COURT DECISIONS

CHADDOCK, Appellant vs. BARNES. From Washington. Filed Sept. 25, 1906. New Trial.

(1) Where, at the close of the testimony, the court at once adjourned until the next day and at the opening of the court the next morning, the appellant tendered in writing certain special instructions, it was error in the presiding judge to refuse to consider them.

(2) Rev. Rec. 538 provides that counsel shall reduce their prayers for special instructions to writing, without prescribing any specified limit as to the time when they shall be presented to the court and the words in section 536 that a request to put the charge in writing must be made "At or before the close of the evidence" should not be read into section 538.

(3) The time within which special instructions should be requested must be left to the sound discretion of the presiding judge and this court will be slow to review or interfere with the exercise of such discretion, but he should so order his discretion as to afford counsel a reasonable time to prepare and present their prayers.

(4) After the argument commences, counsel will not be permitted to file requests for special instructions without the leave of the court.

(5) The title of the grantee under a deed in escrow is a legal and not an equitable one, and especially so, if the deed was rightfully delivered to him.

(6) An escrow is effective as a deed when the grantor relinquishes the possession and control of it by delivery to the depositary and it passes the title to the grantee when the condition is fully performed, without the necessity of a second delivery by the depositary, and it may, by a fiction of law, have relation back to the date of its original execution, or deposit, when necessary for the purpose of doing justice or of effectuating the intention of the parties.

(7) The grantor in an escrow cannot add any condition not existing when the deed was placed in escrow nor can he refuse to accept a tender of compliance with the true condition and thereby defeat the grantee's right to the deed or prevent transmutation of possession and title.

WILLIAMSON vs. BRYAN. Appellant. From Pitt. No Error.

(1) It is the duty of the trial judge to submit such issues as are necessary to settle the material controversies arising upon the pleadings, and in the absence of such issues or equivalent admissions of record sufficiently to reasonably justify a judgment rendered thereon, this court will order a new trial.

(2) Where, under the pleadings in an action to recover possession of land, the sole controversy relates to the allegation of a boundary line between the lands of the plaintiff and the defendant, the plaintiff claiming on the west side of that line and the defendant on the east side of it, an issue as to the location of this boundary line is responsive to the allegations of the pleadings and taken in connection with the admissions was sufficient to justify the judgment.

(3) In an action to recover possession of land it was unnecessary for the plaintiff to show title out of the State, where the answer admitted that the plaintiff owned all the lands on one side of the well established boundary line and the defendant all on the other side.

STATE vs. BARRETT, Appellant. From Pitt. No Error.

(1) Defendants indicted in a joint bill for an offence have no legal right to a separate trial. The granting of such a motion is a matter within the sound discretion of the trial judge, which is unreviewable.

(2) In an indictment for murder, where it appears that about sunset of the day of the homicide a serious affray occurred in which the prisoner participated, that a warrant was issued for his arrest; that the prisoner armed himself after the affray, and that the deceased, a constable, and his posse met the prisoner, and the deceased, with a warrant in his possession, told the prisoner that he had a warrant for his arrest and to consider himself under arrest, that immediately the prisoner shot him down, held that there was sufficient evidence of premeditation.

(3) Where the prisoner weighs the purpose to kill long enough to form a fixed design and then puts it into execution, it is murder in the first degree. But where the intent to kill is formed simultaneously with the act of killing, the homicide is not murder in the first degree.

WOODARD, Appellant vs. MILLING CO. From Edgewood. Affirmed.

(1) Where, prior to the return day counsel for plaintiff and defendant agreed that the case should be heard before the justice on a certain date, such agreement does not amount to a general appearance for the defendant or waive any rights which could have been exercised had he appeared on the return day.

(2) The test for determining the character of an appearance is the relief asked, the law looking to its substance rather than form and where the record shows that the appearance was made for the purpose of dismissing the action, it is a special appearance.

(3) Where defendant's motion to dismiss an action before the justice was overruled, his counsel could then proceed with the trial and did not thereby abandon the right to have the justice's ruling reviewed by the Superior Court.

BURTON vs. BELVIN, Appellant. From Vance. Affirmed. Filed Sept. 25, 1906.

(1) Bastardy proceedings are civil, not criminal, in their nature, and on agreement not to resort to or to discontinue such proceeding is a good consideration for a pecuniary settlement or compromise.

(2) A contract in consideration of past cohabitation to support the mother and children is in the nature of reparation and is neither void nor immoral, even though the illegal cohabitation continues, if there is no stipulation for future cohabitation.

VARNAR, Appellant, vs. RAILROAD. From Northampton. Filed Sept. 18, 1906. Affirmed.

(1) A railroad company, in the exercise of its right to classify its trains, may operate trains exclusively for carrying freight and when it has done so, no person has a right to demand that he be carried upon such trains as a passenger.

(2) Before a person can enter upon a freight train and require the rights of a passenger, he must show some contract made with some servant or agent of the corporation authorized, by express grant or necessary implication growing out of the nature of the employment to meet such contract.

(3) A conductor in charge of defendant's freight train upon which plaintiff was injured had no authority to establish any contractual relation between plaintiff and the defendant corporation, either as passenger or servant and impose any duty upon defendant, the breach of which, followed by injury, gave a cause of action.

(4) A conductor of a freight train has no authority, save in case of emergency, to employ servants to assist in operating his train and the burden is not upon the railroad to show that he had no such authority.

(5) In an action for personal injuries, the fact that several months after the injury the defendant issued to the plaintiff a pass, describing him as an injured employe, does not tend to show any ratification of the attempted employment by the freight conductor.

DUFFY vs. INSURANCE CO., Appellant. From Craven. No Error. Filed Sept. 25, 1906.

(1) A by-law of an assessment insurance company providing that notice may be given members of assessments by mailing, properly addressed, is valid and binding upon the members.

(2) When the duty is imposed upon the company to mail the notice of assessments, in order to obtain a forfeiture it must show affirmatively that the notice was mailed, properly addressed, within the time fixed.

(3) The by-laws of such association when assented to by the members, as provided in the charter, constitute the measure of duty and liability of the parties, provided they are reasonable and not in violation of any principle of public law.

(4) Whether a by-law is reasonable is a question of law for the court.

(5) A by-law of an assessment insurance company, providing that the certificate of the treasurer or book-keeper shall be taken as conclusive evidence of the fact of mailing the notice of the assessment, is unreasonable and invalid.

(6) In an action for the wrongful cancellation of an insurance policy where the policy contained a provision that mailing the notice properly addressed should be a sufficient notice of assessments, it was competent for the plaintiff to testify that he never received any notice of the assessment, for the failure to pay which, the policy was cancelled.

PITTINGER ex PARTE. Appeal by Mrs. Pittinger. Filed Sept. 18, 1906. From Halifax. Reversed and Remanded.

(1) Where a decree of confirmation in a partition proceeding of land recited that certain personalty of G. was sold with the land with the understanding that if it became necessary for the receiver of G. to sell said personalty to pay the debts of G. that the purchaser should be credited with the value of said personalty, the purchaser is entitled to be credited with the actual cash value of said personalty at the date when it was sold by the receiver, and neither the price it brought when sold for cash by the receiver for $350 nor the price it brought when resold for $10,200 by the court and paid for in the greatly depreciated paper of G., is the criterion of its value.

(2) Where, in a partition proceedings for land, it appears that a recital as to certain personalty was inserted in the decree of conformation by consent of all parties, and one of the tenants in common has taken benefit under the decree of receiving part of the purchase money and is now moving in the cause to collect the remainder, she is bound by the recital in the decree.

(3) An endorser or surety who pays the indebtedness is subrogated to the rights of the creditor as against the property of the debtor.

STATE vs. SULTAN, Appellant. From Craven. Filed Sept. 25, 1906. No Error.

(1) There is no rule of law or practice that where a bill of indictment is found at one term the trial cannot be had till the next. Whether the case should be tried at that term or go over to the next term is a matter necessarily in the discretion of the trial judge and not reviewable, certainly in the absence of gross abuse of such discretion.

(2) There was no abuse of discretion in refusing a continuance because the defendant was put on trial in four hours after an indictment for illegal sale of liquor was returned, where the defendant had been arrested six months before on the same charge and had paid the witness to leave and the offense was committed in the town in which the court was held and it does not appear that any natural witness was absent nor that the defendant was prejudiced—and he was represented by the same counsel who represented him before the magistrate and three other counsel.

(3) A motion to quash the indictment, on the ground that it did not appear that any of the witnesses before the grand jury were sworn, was properly refused, where there was no evidence that the witnesses were not sworn and the only defect alleged was that the blank space after "thus" in the certificate "witnesses whose names are marked thus—were sworn and examined," was not filled in with a cross mark or check.

(4) No endorsement on a bill of indictment by the grand jury is necessary. The record that it was presented by the grand jury is sufficient in the absence of evidence to impeach it. State McBroom, 127, N. C. 528 overruled.

(5) A defendant's exception for a refusal of his challenges for cause to four jurors, when he relieved himself of them by the use of his peremptory challenges, is not open to review where he, after exhausting his peremptory challenges, did not challenge any other juror.

(6) In an indictment for illegal sale of liquor, challenges for cause, in that the jurors belonged to the Anti-Saloon League, were properly disallowed, where the jurors had taken no part in prosecuting or aiding in the prosecution of the defendant.

(7) An exception that the punishment is in excess of that allowable upon conviction on the first count need not be considered as the charge makes it clear that the case was submitted to the jury upon only the last count, the others having been nol prossed.

THE DEATH RECORD.

Rev. W. A. Rogers, of Spartanburg, S. C.

Special to The Observer.

Spartanburg, S. C., Sept. 30.—Rev. William A. Rogers, one of the best-known members of the South Carolina Methodist Conference, died at his home on Hampton avenue, this city, Saturday at 10 o'clock after an illness of several months. He was taken to Philadelphia several weeks ago with the hope that a course of treatment in one of the hospitals there might benefit him, but this did not result in permanent benefit and three days ago he suffered a sudden relapse.

Mr. Rogers held pastorates in Charleston, Greenwood, Spartanburg and several other towns in the State, his last active ministerial work being done at Orangeburg. He was financial agent of Wofford College, assistant editor of The Southern Christian Advocate and a member of the board of trustees of Wofford College, his alma mater.

The deceased was 57 years of age and his life is a record of good works, love for humanity and Christian fellowship. Surviving are the widow, four sons and one daughter.

Death of Little Frank Cooke at Louisburg.

Special to The Observer.

Louisburg, Sept. 30.—Frank Cooke, aged 2 years, died last night after a long illness of typhoid fever. He was the eldest son of Mr. and Mrs. P. H. Cooke, the grand-child of Judge C. M. Cooke, and a most intelligent and interesting boy. A little girl lies seriously sick with the same disease. The funeral services took place this afternoon in the cemetery.

Glenn Royall Cotton Mills Declare Dividend.

Special to The Observer.

Wake Forest College, Sept. 30.—The directors of the Glenn Royall Cotton Mills and the directors of the Bank of Wake met a few days ago and each declared a dividend of six per cent. The mill was found to be in the most prosperous condition in its history and the report to the directors was a satisfactory one. An additional engine has been installed at the mill during the past year. The Bank of Wake continues to prosper, and in addition to the six per cent dividend declared, a surplus of $2,000 was set aside by the directors. The bank is having built a two-story brick building in the main part of town and will move into it when completed.

SOUTHERN COTTON MILL STOCKS.
Quotations by F. C. Abbott & Co.

	Bid	Asked
Abbeville Common	95	98
Aetna	—	—
Aiken Mfg. Co.	84	91
American Spinning	129	135
American Spinning, pfd	101	102
Am. Warehouse, Spray, N. C.	—	100
Anderson Cotton Mills	—	102
Arcade	—	100
Arcadia	84	93½
Arista	—	95
Arkwright Mills	122	—
Arlington	125	—
Atherton, N. C.	—	90
Avon	105	—
Avondale	103	—
Augusta, Ga.	50	88
Bibb	—	—
Belton	—	110
Bonnie	103	106
Brandon Cot. Mills, S. C.	115	—
Bryson Cot. Mills, S. C.	75	—
Brookside	101	—
Broomfield	106	112
Buffalo Mills, S. C.	—	—
Cabarrus	120	130
Cannon Mfg. Co	150	160
Capital City, pfd.	70	90
Chadwick N. C. pfd.	102	—
Cherryville	60	67
Cheswell, S. C.	91	94
Cheswell, S. C., pfd.	100	—
Clinton	125	—
Clifton com.	122	—
Clifton, pfd.	102	104
Cliffside	120	—
Chiquola Cotton Mills	93	96
Chronicle Mills, N. C.	—	—
Courtney	100	102
Converse	118	129
Cherokee Mfg. Co.	133	—
Columbus Mfg. Co.	—	101
Cora	98	100
Coxe	—	67
Darlington	62	66
Dallas Mfg. Co., Ala.	—	96
Dover Yarn Mills, N. C.	100	—
Drayton	89	91
Dilling	—	60
Dillon	—	98
Efird, N. C.	125	—
Eagle & Phoenix	125	131
Elmira pfd	102½	105
Easley	133	—
Edenton, N. C.	—	—
Enterprise Mills, N. C. (par 50)	20	—
Enoree	84	89
Enoree pfd.	99	102
Erwin, pfd.	100	104½
Eureka	—	100
Exposition	200	—
Fairfield, pfd.	—	96
Florence	—	140
Fountain, N. C.	—	85
Granby, 1st. pfd	39	—
Granby, 2nd pfd.	—	—
Gaffney Mfg. Co.	—	96
Gaston	—	111
Gastonia	—	—
Gibson	—	101
Gluck	97½	98
Glen Lowrey, com.	101	104
Glen Lowrey, pfd.	—	100
Glenwood	103	—
Graniteville, S. C.	160	—
Gray Mfg. Co.	106	110
Grendale	113	116
Greenwood	95½	97
Highland Park	—	135
Highland Park, pfd.	—	101
Hartsville	—	94
Hartsville, pfd.	—	98
Henrietta Mills	201	—
Hoskins pfd.	100	—
Hoskins N. C.	105	110
Huguenot, pfd.	—	—
Inman Mills, S. C.	94	98
Inman Mills, S. C., pfd.	97	99
John P. King Mfg. Co.	99	103
Kesler	135	—
King's Mountain, (par 50)	—	50
Knoxville Cotton Mills	125	130
Lancaster Cotton Mills	105	—
Lancaster Cotton Mills, pfd.	—	100
Lanett	100	110
Langley Mfg. Co.	92	98
Laurens	166	171
Linden, N. C.	128	—
Liberty	—	90
Limestone	115	—
Lockhart, S. C.	—	—
Loray	93	96
Louise Mill, N. C.	—	100
Lowell	140	—
Lumberton	175	—
Marlboro Cotton Mills	86	100
Manchester Mills	109	110
Mills Mfg., Co.	105	110
Mills Mfg. Co., pfd.	102	—
Modena Cotton Mills	—	121
Mollohon	90	100
Mollohon pfd	90	100
Monaghan	—	101
Monarch S. C.	92	98
Monarch, S. C. pfd	90	98
Mooresville, N. C.	95	111
Newberry	110	—
Nokomis, N. C.	110	—
Norris Mills	106	110
Olympia, pfd	80	—
Odell Mills	—	81
Orangeburg, 1st. pfd.	92	101
Orangeburg, 2nd. pfd	88	92
Orr Cotton Mills, S. C.	103	105
Ozark	—	130
Pacolet Mfg. Co.	180	197½
Pacolet Mfg. Co., pfd.	160	164
Patterson	130	140
Pee Dee	200	—
Pelzer Mfg. Co.	170	176
Piedmont Mfg. Co.	167	176
Pelham, Ga., pfd.	—	—
Pelham, Ga., com.	—	—
Piedmont Wagon Works	250	215
Pell City Ala.	—	91
Pell City, Ala., pfd.	100	—
Poe W. F. Mfg. Co.	122	—
People's Cotton, Ala.	—	—
Richland S. C. pfd.	55	60
Roanoke Mills	122	—
Raleigh	140	—
Roberdell	220	—
Richmond Spinning Co.	90	—
Riverside Mfg. Co.	99	101
Rocky River	115	—
Saxon	102	—
Senaca	—	—
Senaca, pfd.	—	—
Sibley, Ga.	64	69
Social Circle	—	—
Southern, N. C.	80	—
Springstein	90	—
Statesville Cotton Mills	—	98
Salisbury	150	154
Trenton, N. C.	126	—
Tryon, N. C.	131	142
Tucupua, S. C.	165	—
Tucapua, S. C. pfd.	100	—
Tuscarora	105	—
Toxaway	92	93½
Union-Buffalo 1st pfd.	—	81
Union-Buffalo 2nd pfd.	—	61
Unity, Ga.	128	—
Vance	100	—
Victor Oil	—	—
Victor Mills, S. C.	115	—
Walhalla, S. C.	—	81
Warren Mfg. Co., pfd.	105	—
Warren Mfg. Co.	97½	100
Washington Mills	25	30
Washington Mills, pfd.	100	115
Watts	86	93
Ware Shoals	85	91
Wiscassett	125	—
Whitney	145	—
Woodruff	105	106½
Woodside	95	100
Williamston	—	101

BANK STOCKS.

American, Greenville	127	131
Atlantic National Bank	240	265
Central National of Spartanburg	127	—
Bank of Spartanburg	164	—
Battery Park, Asheville	190	—
Bank of Columbia	120	—
Charlotte Trust Co.	105	110
Citizens National, Gastonia	115	—
Commercial of Charlotte	260	—
Charlotte National	170	—
City National, of Greenville	170	—
Carolina National, Columbia	140	—
Cabarrus Savings Bank (par 50)	62	—
Equitable Trust Co., Augusta	—	—
First National of Charlotte	170	172
First National of Morganton	130	—
First National of Gastonia	125	—
First National of Spartanburg	145	—
First National of Richmond	245	—
Fidelity Loan & Trust, of Spartanburg	120	—
Merchants' & Farmers', Charlotte	152	155
Merchants' & Farmers', Spartanburg	140	—
National Exchange Bank, Augusta	120	—
National Loan & Exchange Bank, Columbia	140	—
National Bank of Gaffney	160	—
Palmeto Bank & Trust Co.	120	—
People's National, Winston	110	—
Southern States Trust Co.	130	—
Southern Loan and Savings Bank, Charlotte	150	—
Southern Trust Co., Spartanburg	100	105
Spartanburg Savings	150	—
Southern Trust Co.	—	—
Wilmington Savings & Trust Company	700	—
Greensboro Life	—	126

BONDS.

N. C. 6s 1919	120	—
N. C. 4s 1910	102	102½
N. C. 4s 1909	—	—
N. C. 4s int. added 1913	105¼	—
Spray Woolen Mills 6s, interest added	—	100
Arista Mill 6s, int. added	—	103½
Columbus Power Co., 5s	—	—
Granby Mills 6s	—	93½
A. T. & O. R. R. 6s 1919	105	—
N. C. R. R. Stock	185	186½
Charlotte 4½s 1935 int. added	—	108
Atlantic & North Carolina	—	—
Atlanta & Charlotte 1st	102¾	—
S. C. Brown Bonds	—	111¾
Atlanta & Charlotte Stock	175	—