

SUPREME COURT DECISIONS

FAYETTEVILLE STREET RAILROAD, appellant, vs. RAILROAD, respondent.

(1) Where the grantee of a railroad franchise is not placed in the front of the record as required by Rule 19 '04, it is allowed under Rule 20 in the expectation that appellants hereafter will conform to these requirements.

(2) Ordinarily hereafter motions to dismiss appeals will be allowed upon a failure to comply with the Rules of this Court, without discussing the merits of the case.

(3) Where the line of a railroad is clearly defined by the existence of an old road-bed which is entered on the map and the route so marked is approved and adopted by the directors as its permanent location, in such case, a survey by engineers is not of substance and should be considered as essential.

(4) The making of a preliminary survey by an engineer of a railroad company, never reported to the proper authorities, does not prevent another company from locating on the same line.

(5) Where priority of right has been secured by priority of location, it cannot be defeated by a rival company agreeing with the owners and purchasing the property.

(6) By section 2,800 of the revised railroad corporation act, the visual railroad corporation are to erect their road is constructed to file a map and profile of their route and of land condemned for its use with the corporation commission, and this is for information deemed necessary to enable that body to deal intelligently with matters within the scope of its duties, and is not required as a part of a correct and completed location.

(7) In an action to enjoin defendant railroad from interfering with a right of way claimed by plaintiff street railway, objection to the validity of plaintiff's claim on the ground that the capital stock has not been issued and that no money has been paid thereon, that plaintiff is entitled to a decree that it is entitled to a right of way on the ground that the capital stock has not been issued and that no money has been paid thereon, that plaintiff is entitled to a decree that it is entitled to a right of way on the ground that the capital stock has not been issued and that no money has been paid thereon.

(8) There is no requirement of the statute that the stock of a street railway company organized under the general corporation law shall be issued or paid up before a valid organization can be effected or corporate action taken.

(9) A provision in a charter giving a railroad company the specific right to condemn old and abandoned road-beds does not apply to an old and abandoned road-bed over which another railroad has established a prior right of appropriation and which has become a part of the latter's right of way.

(10) Property which has been appropriated to public use, railroad or other, may, under lawful authority and procedure, be condemned and so appropriated to another public use. But where such second appropriation is entirely inconsistent with the first, or practically destroys it, such power can only be exercised by reason of legislative authority given in express terms or by necessary implication.

(11) Where the plaintiff had located its right of way along an old road-bed and the defendant has no express grant of a right of way, the right of way and there is no necessity shown for such action and this road-bed is only sufficient to permit the laying of one track, and if the defendant is shown to have exercised its right of way, such action will practically destroy the use of this right of way on the part of plaintiff, the plaintiff is entitled to the exclusive use of this right of way, and the defendant's claim to appropriate it for its own right of way and to injunctive relief to restrain the defendant from interfering therewith.

(12) Where the terms of a contract are found by the jury to be inoperative rights and duties of the parties under the contract become questions of law for the decision of the court.

(13) In an action for the specific performance of a contract, the plaintiff is not bound to tender the purchase money of the land if it is not necessary that the note should contain a description of the land or refer on its face to the land.

(14) In an action on a note alleged to have been given for the purchase money of land, the defendant, if he is not a party to the action, but claims that his title will be affected if the decree is set aside, has no right to be heard upon this motion.

(15) Upon a motion by the plaintiff to set aside a decree upon the grounds that the Superior Court had no jurisdiction, one who was not a party to the action, but claims that his title will be affected if the decree is set aside, has no right to be heard upon this motion.

(16) Where the plaintiff complains for trespass in cutting and removing timber trees from his land, "to his great damage" under this allegation he was entitled to recover the value of the timber so removed together with adequate damages for any injury done to the land in removing it therefrom.

(17) The prayer for relief is not an essential part of the complaint and the court will give relief appropriate to the complaint, proofs and findings of the jury without reference to the prayer for relief.

(18) Where in an action for trespass it appears that the boundary line between the plaintiff and defendant had been established in an proceeding proceeding in which the defendant did not raise an issue of title, as is stopped by the judgment in that proceeding, from denying the boundary thus determined to be the true line and from asserting title to any land beyond it.

JOYNER DECLINES JOB.

Superintendent of Public Instruction J. Joyner has declined the offer of the State Normal and Industrial College here this afternoon, State Superintendent of Public Instruction J. J. Joyner was elected president of the college to fill the vacancy caused by the death of Dr. Chas. D. McIver, Sept. 17th. Prof. Joyner promptly declined to accept the place. This leaves the college trustees in a worse position than ever. It had been freely predicted and generally understood in educational circles that he would be elected and it was expected that he would accept. Strong influences were at work on both sides. Friends of the college were asking him to accept, while other men in educational movements in the State were urging him to remain where he is now. The latter prevailed. "My heart," said he, "is with the Normal, but my duty is along other lines."

Had he accepted it, it is understood that Prof. J. B. Caryle, of Wake Forest College, would have been appointed superintendent of public instruction.

Mr. and Mrs. R. J. Cobb Entertain Their Friends—Event Marks the Twentieth Anniversary of Their Marriage—A Notable Social Event at Greenville.

Correspondence of The Observer. Greenville, N. C., Nov. 19. The joyous occasion of the twentieth anniversary of the marriage of Mr. and Mrs. R. J. Cobb, was celebrated here this evening at the residence of the bride's parents, Mr. and Mrs. W. D. Dock, Alfred street, Greenville, S. C.

Mr. and Mrs. R. J. Cobb, who were married at Greenville, S. C., on Nov. 19, 1886, were joined in matrimony at the residence of the bride's parents, Mr. and Mrs. W. D. Dock, Alfred street, Greenville, S. C.

Mr. R. J. Cobb is the president of the Greenville Banking & Trust Company and is most highly esteemed in our midst, as was testified by the cordial hand-clasps and fervent good wishes of the large number of callers, who enjoyed the occasion to the fullest extent. A band, secured for the evening, rendered an excellent musical program, consisting of a variety of songs, duets and flowers rising in delicate tints with the exquisite collections of Dresden and Sevres China, rendered the scene a round of beauty from room to room.

Delicious refreshments were served in truly elaborate Southern style, the guests lingering until the midnight hour.

FOR UNBECOMING CONDUCT. Aldermen Investigating Charges of Cowardice Preferred Against Two Asheville Policemen—A Third May be Involved.

Special to The Observer. Asheville, Nov. 20.—Growing out of the tragedy enacted on the streets of Asheville last Tuesday night when the bodies of a negro and a white man were shot to death by a negro desperado, the police committee of the board of aldermen to-day began an investigation of charges lodged against two members of the police force accused of neglect of official duty. It has been alleged that the conduct of the two policemen was unbecomingly brave officers, that on the night of the shooting they went to police headquarters and "hid out" instead of going to the aid of Bailey and facing the desperado on the square. Whether the evidence in the possession of the committee is conclusive is not known. The committee believed the charges serious enough to investigate and two sessions of the committee were held to-day. The sessions were behind closed doors and the result of the investigation, if concluded, has not been announced.

The investigation has created some stir here and it is not improbable that the conduct of another member of the force will be subject to investigation.

PUGILIST HELD FOR MURDER. Coroner's Jury Blames Death of Mike Ward on Harry Lewis and a Warrant is Issued for Him—Promoter of the Prize Fight Indicted Also.

Special to The Observer. Spartanburg, S. C., Nov. 20.—The trial of Mike Ward and Jim West, charged with assault and battery, whipping Mrs. Harritt Coburn, in Union county some months ago, began in Sessions Court to-day and after the feature of to-day's proceedings was the testimony of Mrs. Coburn, who related the circumstances, and varied from the accounts that have appeared previously in these dispatches. She was positive that the defendants are the ones who inflicted the beating on her. So far a warrant has been issued for the arrest of Lewis, who has been in custody since the night, charging him with wilful murder.

Frank Lynch, of this city, who promoted the boxing match between Mike Ward and Harry Lewis, was arrested to-day on a warrant charging him with making an agreement to promote a prize fight. He was held under \$1,000 bond.

Murphy Line Still Blocked. Special to The Observer. Asheville, Nov. 20.—Conditions on the Murphy line of the Asheville and Spartanburg R. R. are such that it is impossible to get a train through to-day. Although Superintendent Rameur has large forces of men along that line and every effort is being made to speedily repair the damage done by recent heavy rains and snows in the mountains, Superintendent Rameur has made the report: "Are operating trains east of Balsam. No wire communications east of Bryson City. Ample force on lines and sufficient amount of lumber on route to make repairs."

Mr. Carnegie to Make \$1,000,000 Per Annum. New York, Nov. 20.—The report that Andrew Carnegie has promised \$1,000,000 to Congressman Richard Barthold, of Missouri, to promote the cause of international arbitration was denied at the residence of Mr. Carnegie in this city to-day. Mr. Carnegie said that there was no basis for the report.

Seventeenth Naval Stores. Savannah, Nov. 20.—Turpentine steady 6 1/2; sales \$4; receipts \$4; shipments 1,125. Rosin steady 2 1/2; sales \$4; receipts \$4; shipments 420; stock \$6,646. Quote: A B C \$1.75 to \$1.90; D \$1.80 to \$1.95; E \$1.90 to \$2.00; F \$2.00 to \$2.10; G \$2.10 to \$2.20; H \$2.20 to \$2.30; I \$2.30 to \$2.40; K \$2.40; M \$2.50; N \$2.60; W \$2.60; W \$2.60.

Wilmington, Nov. 20.—Spirits turpentine firm 6 1/2; receipts 25. Rosin firm \$1.60; receipts 125. Crude turpentine firm \$2.35, \$1.50 and \$1.40; receipts 113.

The Money Market. New York, Nov. 20.—Money on call strong 6 to 10 per cent; ruling 7 1/2; closed 7 1/2. Time loans: 60 days 7 1/2; 90 days 7 1/2; 6 months 8. Prime mercantile paper 8 to 9 1/2 per cent. Sterling exchange steady at 46.

TO MAKE ROOM FOR MILL.

Bodies of Birdie Lay and Wife Removed From Site of New Flat Cotton Mill, Where They Have Resided, One for Fifty, the Other for Thirty Years—Occupied Exact Spot Where the Old Mill Buried in 1870.

Special to The Observer. Gastonia, Nov. 20.—A matter of some historical interest was the removal of the bodies of the late Mr. Birdie Lay and wife from the site of the old Flat Cotton Mill, where they have resided for fifty and thirty years, respectively. The bodies were removed to the site of the new mill structure to stand in view of the fact that the body of the former had been buried fifty years and that of the latter thirty years. The bodies were placed in new boxes and reinterred.

The fact of greatest interest in connection with this matter is the fact that the bodies were buried by request of the elder deceased, in the very center of Gaston county. The spot having been located as such by the late Mr. Isaac H. Lay, at the time of his death, Mr. Lay placed a stake there and made the request of relatives that his body and that of his wife be interred immediately on the spot observed by him. It is also thought at this time that it would be necessary to remove the bodies to make room for a cotton factory—but such is the march of progress and the realization of an old dream on sacred ground.

Rarely at the present time are graves as substantially made as these. Each occupied a vault-like space hewn out of natural rock. In these apartments the coffins were placed and over the openings were laid heavy plank, the whole being covered by four and a half feet of dirt. In some cases the bodies were placed in a Weathers, of Virginia, were the parents of Esquire Birdie Lay and the late Mrs. Birdie Lay, of this county. They were remembered by the other citizens of Gaston. They came to Gaston from Guilford County, N. C., having moved there from Virginia. The generation preceding immigrants to this country, the late Mr. Birdie Lay entered one hundred acres of land, including the La Far farm, receiving patents from the State in 1845 and paying \$100 for the hundred acres. This same land is worth to-day perhaps \$150 or more per acre.

NEWSPAPER FOR DALLAS. Republicans Propose to Establish Paper by Name of Gaston Republican. Special to The Observer. Gastonia, Nov. 20.—The Gaston Republican, a paper which will be published in the town of Dallas, is the subject of a project to establish a newspaper that will be devoted to the interests of the Republican party in the county of Gaston. It is not a new one, for it has been a topic of discussion among the leaders for some time. Only within the last year have the plans for the newspaper been set on foot.

In an interview with one of the chief promoters of this new journal, your correspondent ascertained that the paper would be a weekly sheet. It will consist of four pages of original stuff, or at least of matter that will interest Gaston county Republicans. A plant which will be used in the publication has already been purchased from a Richmond firm, and its delivery is expected before the new year. A competent man will be placed in charge of the practical printing and will oversee the workings of the mechanical features. The treatment of the paper by the Gaston will contribute from time to time special and original articles.

The promoters are enthused over the project, and say that they will make their political organ the means of great gain for the party. They say that the time is ripe for a political awakening in this county and that a well organized and well managed paper will be effective in arousing the county next election—all of which aforesaid remains to be seen.

Mr. Will B. Craig has resigned his position with the Southern Railway and will come to Gaston for the purpose of operating an electrical shop. He will keep a stock of motors, fans, and other such appliances, and will do a general wiring business. He is an experienced workman, and the town will welcome him.

James Folie, a sixteen-year-old boy who attempted to burglarize the store of Robinson Bros. last Sunday, and who was caught in the store by Mr. I. H. Hixson, the partner of the firm, was tried yesterday and bound over to Superior Court under the sum of \$100. His case is set for trial Thursday.

The Mrs. Coburn Case on at Spartanburg. Special to The Observer. Spartanburg, S. C., Nov. 20.—The trial of Mike Ward and Jim West, charged with assault and battery, whipping Mrs. Harritt Coburn, in Union county some months ago, began in Sessions Court to-day and after the feature of to-day's proceedings was the testimony of Mrs. Coburn, who related the circumstances, and varied from the accounts that have appeared previously in these dispatches. She was positive that the defendants are the ones who inflicted the beating on her. So far a warrant has been issued for the arrest of Lewis, who has been in custody since the night, charging him with wilful murder.

Ground Broken for Yarn Mill. Special to The Observer. Spartanburg, S. C., Nov. 20.—Ground was broken to-day for the new yarn mill, to be near the furniture factory and which will be operated by power from a big engine until the Southern Power Company introduces its electricity here.

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HEAVY REPAIRS.

Let Cotton Mill Men: "We ought to have a machine shop in the South to do our heavy repairs." 2nd Cotton Mill Men: "What do you call heavy repairs?" 1st C. M. M.: "My Corliss engine isn't working right. I hate to spend the money to bring a man all the way from Providence, R. I. to overhaul it." 2nd C. M. M.: "You don't have to. The D. A. Tompkins Co. has been overhauling Corliss engines for a long time, and they do it well. They've got all the tools and small engines to drive the boring bars and everything." 1st C. M. M.: "Is that so? If the Tompkins Co. are doing such work here, then send a man to the mill at once to look the Corliss over and see what it needs and make a price on doing the job. And so a knowledge of our shop gradually extends. That's the trouble we have in building up a machine building and repairing business here in the South. The mill men have got their minds fixed on Providence and other distant places and don't look up the facilities here at home." There are many economies in dealing at home. There is saving of freight and of time. When there is a break down the wheels can be put turning again quicker through a home shop than through a distant one. We solicit heavy repairs, as well as medium and little ones. We are well equipped to do all repairs.

Table with columns: WHEAT, CORN, OATS, PORK, LARD, SYRIAN LIVES FOOT AT FAYETTEVILLE. Includes prices for various commodities.

Syrian Loses Foot at Fayetteville. Fayetteville, Nov. 20.—A Syrian, pedlar, name unknown, while attempting to cross the railroad tracks in the outskirts of the city, this afternoon had his foot mangled and cut off by the blow of an engine. The injury was carried to the Highsmith Hospital for treatment.

Casacweet is a harmless compound of vegetable extracts that is wonderful in its beneficial effects on the stomachs of babies and children. Recommended and sold by Hawley's Pharmacy.

Electric Cooking. We have an electric kettle in which one may cook three eggs, in three minutes, and with three teaspoonfuls of water. We have other appliances to do other cooking. We keep in stock appliances to do every line of grill-room cooking by electricity. Also electric foot warmers, flat-irons, curling irons and other economic shocking things.

The D. A. Tompkins Co. Engineers and Machinists, Charlotte, N. C.

Pure good old RED TOP RYE. YERDMAN WESTHEIMER & SONS, RICHMOND, VA. LOUISVILLE, KY. ST. JOSEPH, MO.

REMARKABLE OFFER. EL MAIZE CORN WHISKEY. PUT UP IN A HEAT STABLE PACKAGE. This is the product of the mountains still of North Carolina, and is rich in quality and flavor, made smooth and mellow by age.

AMULET. FIVE YEARS' OLD OLD FASHIONED CORN WHISKEY. 4 FULL QUARTS \$2.65. Express Charges Paid By Us.

COUSINS SUPPLY CO. 10 & 12 S. 12th ST. RICHMOND, VA. REFERENCE: BURLINGTON, N. C. HANK.

Chicago Grain and Provisions. Chicago, Nov. 20.—The wheat market was weakened to-day by realizing profits in the December delivery, but the market became more firm just before the close which was a shade under the quotations of yesterday. Corn was off 1/4. Oats were down 1/4. Provisions were 1/2 to 3/4 higher.

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THE D. A. TOMPKINS CO. MACHINE BUILDERS. CHARLOTTE, N. C. THE CHARLOTTE SUPPLY CO. AGENTS FOR American All-Wrought Steel Split Pulleys and "Giant" Stitched Rubber Belting. We carry in stock Yale and Towne Hoists up to six tons capacity; also a full line of Packing, Pipe, Valves and Mill Supplies.

"Tell Us Your Wants" We will send on approval to any responsible party in North or South Carolina, anything in Harness or Saddlery Goods. Our stock of Harness, Saddles and Accessory Goods is the largest in the Carolinas and we can furnish you anything a horse wears or a horseman needs. Write or call on us. J. W. WADSWORTH'S SONS CO. CHARLOTTE, N. C.

FIRE INSURANCE. THE FOLLOWING COMPANIES REPRESENTED AND AMPLE PROTECTION GUARANTEED: AETNA, HARTFORD, PHENIX, PHOENIX, NORTHERN, NORTH BRITISH, PIEDMONT. R. E. COCHRANE. Insurance and Real Estate Agent. King's Business College. INCORPORATED. CAPITAL STOCK \$30,000.00. It is a conceded fact, known everywhere in North Carolina, and by those who are informed, that KING'S is the SCHOOL—THE RIGHT SCHOOL, viewed from every standpoint of merit and worthiness. The best faculty, best equipment, the largest. More graduates in positions than all other business schools in the State. So get the BEST. It is the cheapest. Write to-day for our SPECIAL OFFERS, NEW CATALOGUE and full information. Address KING'S BUSINESS COLLEGE, Charlotte, N. C., or Raleigh, N. C. We also teach Bookkeeping, Shorthand, Penmanship, etc., by mail. Send for our Home Study circular.

"The Traveling Man's Home." THE CENTRAL HOTEL. M. P. O'CALLAHAN, Mgr. Charlotte, N. C. In The Center of the Business District. Having spent \$30,000 in renovating, remodeling and refurbishing this popular Hotel, it now ranks with the best in the State. All rooms heated by steam and lighted by electricity. Electric elevator. New bath. Cuisine unsurpassed south of Washington. This Hotel is now thoroughly screened throughout, thus abating the fly and mosquito nuisance.

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