U. C. T. Column

A GENTLE MAN.

He was as mild a man and kind
As in this world of ours you'd find;
So gentle he that in the night
He would not even strike a light;
When it was chill and cold about
He would not put the candle out;
So truthful he could not, he said,
Endure to lie upon his bed.
To hang a picture here or there
Was something he could never bear;
And oft the beating of the rain
He knew must give the window pane;
He said it always gave him some
Regret to have a week day come,
And as the seasons passed along
He hoped they would become quite strong.
Lest it become completely broke,
He would not ever crack a joke,
Or drive a nail because he said
'Twas better if the nail were led.
To shoe a horse he heard might give
It pain, and he so sensitive,
No matter what was his excuse,
Could never bear to shoo a goose.
To break the news he'd not agree,
No matter what the news might be,
Lest he should give it needless pain
Or could not make it whole again;
When from its high and lofty tower
He heard the town clock strike the hour
He shut his ears, so great his woe
To think 'twould hurt the hour so.
On sunny days, though oft he tried,
He could not lock his door inside,
Because, when all was bright and fair,
It seemed a shame to keep it there;
And oft he let his lamp go out
When it was pleasant all about,
Because he felt it would be sin
If he should always keep it in.
In darkness oft he sits and sings
To keep from making light of things;
He will not build, I know 'tis true,
A grate fire when a small will do,
And he spends many useful hours
In taking pistils from the flowers,
Lest from their little shoots should be
Some quite appalling tragedy.
—J. W. Foley, in New York Times.

Merchants' Journal.

The Merchants' Journal, which was moved last month from Raleigh to Charlotte, made its first appearance from its new Charlotte home last week, and it is a credit to our city. We are proud of this paper and wish for its management much success in its new home. We regard the movement of this paper to our city one of Charlotte's very best "catches" of 1908. We welcome you, Brother Johnson, and extend the warm, glad hand.

Traveling Men's Day.

The Mecklenburg County Fair Association has set Thursday, October 22d, 1908, as "traveling men's day." Talk up this day. Begin now. We want every traveling man in the borders of the two Carolinas present on that day.

What the Boys Say.

Four hundred members for Charlotte council by April 1st, 1909.

To attend ground council meeting at Asheville in May one hundred strong.

To make Thursday of "fair week" in October the largest day in their history.

Regular Meeting.

Charlotte council will hold its regular meeting Saturday night at 8 o'clock. This meeting is to be strictly a business one. Every member should make it a point to be present and see just what his council has been doing. Come, brother.

To the Merchants.

Remember that the time to buy the goods that sell is before the demand is at its height.

That you can afford to stock up liberally on goods that sell quickly when the demand begins.

That we "boys" need the business.

Briefs.

The cup that cheers is a noisy piece of crockery.

Everything comes to him who has the price.

A rolling stone always goes down hill.

There is no use to write a book about why the U. C. T. leads and is doing a great work. You see the fruits of its work daily.

Some men grow under responsibility; others merely swell.

The mule has a reputation because it knows which end of its ability to use.

Talk the U. C. T.'s; they carry on a great work.

Next meeting Saturday night at 8 o'clock. We want you there, brother.

Every salesman should be his best to-day—a little better to-morrow, if possible.

If a salesman wants results, work—and keep at work.

Mr. Salesman, do not talk your prices so much. Talk quality. That is one of the many secrets of salesmanship.

Mr. Salesman, if you cannot give a guarantee to your customer as to the line you carry, you had better make a change.

Mr. Salesman, watch profits and your firm will look after your salary.

Mr. Salesman, satisfaction to your customer is of great importance in the building up of your business.

A sound argument is not one composed largely of noise.

A trouble-hunter always comes home with a full game bag.

Grand Council meeting in Asheville in May. Plan to be there, brother. A good time guaranteed and a warm welcome awaits all.

Personals.

Mr. H. C. Marley, of No. 296 Council, Greensboro, was a Charlotte visitor last week. Brother Marley is senior counselor of Greensboro council and is exceedingly popular with all the boys.

Mr. Allen Young is in from a successful trip in western North Carolina.

Mr. John C. Dulin will return to the city in a few days.

Mr. R. H. Fireshoets, one of the most popular road men in the Carolinas, passed through the city a few days ago on his way to New York City on business.

Mr. M. H. Shirtz, of Newark, N. J., whose line is fancy canned goods, is in the city, stopping at the Selwyn.

Mr. John Blake is in after a very successful trip. Mr. Blake is with the Burwell-Dunn Company and enjoys the reputation of being one of the largest drug salesmen that travels the road.

SUPREME COURT DECISIONS

B. M. Whitehurst vs. Atlantic Coast Line Railroad Company.

1. When by agreement depositions were read upon the trial of an action, and it was testified that the deponent was at the time sick at home, for the purpose of showing she could not be present, the error, if any, was harmless.

2. In an action for damages for the burning of plaintiff's house, etc., by reason of hot cinders, negligently emitted from smoke stack of defendant's locomotive, it was not error in the court below, in identifying a certain engine which had passed immediately preceding the time of the fire, to permit plaintiff to testify that "the whistle he knew as Captain Taylor's" was the one on the engine; when, under the whole evidence the locomotive in question was clearly identified, and the jury could not have been misled.

3. Testimony of one who was on the premises of the plaintiff with another person immediately preceding the burning of his house, etc., thereon, that the other person "said something like hot pebbles had fallen on his hands and burnt him," in the presence of the plaintiff, is corroborative evidence when such other person has testified to the fact.

4. When the damages are claimed to have been caused by the burning of plaintiff's house by reason of a defective smake stack or a spark arrester on defendant's engine, it was competent to prove that the same train had set fire to property adjoining that of plaintiff, or near thereto, at or about the time in question.

5. When it appears from the entire evidence that a witness was permitted to testify as to fires caused by the same engine on the day of the week immediately preceding the injury complained of, it was competent evidence, and within the rule. (Cheek vs. Lumber Co., 134 N. C., 225, cited and approved).

6. Taken in connection with other evidence, it was competent to identify the train, for a witness to testify that he saw smoke in his own woods immediately after seeing that arising from plaintiff's premises.

7. It was competent to contradict the evidence of defendant's expert witnesses as to the distance hot cinders could have been thrown from its engine, to show by witnesses how far they had been thus thrown according to their own knowledge and observation.

8. In an action for damages arising from the alleged imperfect construction of the smoke stack of defendant's engine from which hot cinders were thrown upon plaintiff's property, causing it to take fire, a motion as of non-suit, upon the evidence, will not be sustained, when there is evidence tending to show that the sparks or cinders from one of defendant's engines, caused the fire, and expert witnesses testified that, if this was the case, the engine was not properly equipped, or the spark arrester was not in good condition.

Rena Young, by next friend, vs. The Fosburg Lumber Co.

1. The interpretation of a written contract, free from abigulty, is a question of law for the court.

2. When the construction of a written contract establishes the fact of an independent contractor of the defendant, the question arises for the jury to find whether the one claimed thereunder to be such contractor was acting under the written instrument at the time of the injury inflicted upon the plaintiff.

3. The written instrument construed to establish the relationship of independent contractor, does not establish such relationship when it does not truthfully set forth the agreement, and when, notwithstanding the language of the writing, the defendant exercises control over him in the selection and employment of the laborers, or when there are such other facts as to constitute him merely an employe.

4. When there is no negligence shown in the selection by defendant of one with whom it has contracted that he should do certain specified work, independently of it, and not under its control, it is not liable in damages arising from his negligent acts whereby plaintiff was injured.

5. The defendant is not liable in damages for the negligent acts of its independent contractor, when the work it contracted with them for him to do was not intrinsically dangerous, and could have been avoided with reasonable care and foresight.

6. When the defense to an action to recover damages for personal injury is that the person who caused the injury complained of was an independent contractor, a written agreement tending to prove that fact may be introduced in evidence, though not set up in the answer.

J. S. Avery vs. West Lumber Company, et al.

1. Evidence is sufficient upon the question of negligence which tends to show, that plaintiff was unused to saw milling machinery, and, under the direction of one having authority, and whom he felt compelled to obey, while attempting to oil a running saw with a bottle, which was customarily used for the purpose, fell so that his arm was cut off.

2. The master owes it a duty to his employes to furnish proper tools and appliances; and where, in the discharge of his duties, the plaintiff was compelled to use a bottle in oiling the saw machinery at defendant's lumber mill, the defendant having failed to furnish an oil can with which this could have been safely done under the circumstances, and, in doing so, fell upon the saw, resulting in the loss of his arm without fault on his part, the defendant is liable in damages.

3. The defendant is responsible in damages for an actionable wrong committed upon a fellow employe by one under whose direction he was employed to work.

4. When the court below has correctly charged upon the question of contributory negligence in the plaintiff's assuming, under the direction of one having authority, to get upon the machine and oil a running saw at defendant's mill, and as to his using a bottle for the purpose when an oil can was the safe and correct implement, the verdict of the jury awarding damages as the result of defendant's actionable negligence will not be disturbed.

Oak Hall Clothing Company vs. Anthony Bagley.

1. The judge below has no power to continue motions of judgments, or to set aside verdicts, to be passed upon by him at a subsequent term of court, without the consent of the parties litigant.

2. It is practically an amendment of the record at a subsequent term when the judge finds, at the succeeding term, that the parties litigant consented that motions respecting judgment at the former term should be continued.

3. When the judge below sets a verdict aside, in his discretion, as being against the weight of the evidence, his action is not the subject of review upon appeal.

4. In the absence of case on appeal duly served, the Supreme Court cannot pass upon the correctness of the charge of the judge below, sent up with the judgment appealed from.

J. W. Sherrod vs. M. J. Battle, et al.

In an action to try title to timber lands and to restrain cutting the timber, it having been found as a fact by the judge below "that there is a good faith contention on both sides, based upon evidence constituting a prima facie title," it was proper for him to forbid either party from cutting the timber until final determination of the suit.

Gillikin and Gaskell vs. The Lake Drummond Canal Company.

1. It is actionable negligence on the part of the defendant to improperly moor its barge in its canal, so as to cause injury to plaintiff's vessel while it was being towed by defendant through its said canal.

2. A large barge, negligently moored to the bank of a canal, so that thereby it is drawn or floats out into the canal, causing injury to plaintiff's vessel, inflicting serious damage, are facts that come within the meaning of the term "obstruction."

3. A cause of action is sufficiently set out in the complaint when the facts alleged apprise the defendant fully of the grievance asserted against him, and the injury for which redress is demanded.

4. When the facts alleged in the complaint sufficiently state a cause of action, the defendant should move to have them set out more specifically, should he so desire.

Julius Manning and J. D. Webb vs. L. E. Fountain.

1. W became responsible for the payment of a horse purchased by M of F with the agreement that the horse was to be returned by M if it proved unsatisfactory. The horse was accordingly returned, and F represented to W. that the trade had been made, and induced him to give his promissory note for $178, the purchase price, which was negotiated by F. Held: 1. The cause of action by W against F was based upon the failure of the consideration of the contract, and for money had and received to the use of W; 2. The plaintiff could waive the tort and sue upon the contract; 3. The cause of action was within the jurisdiction of the justice of the peace.

2. When the breach of contract involves a tort the plaintiff may waive the contract and recover damages for the tortuous injury.

W. T. Caho vs. Norfolk and Southern Railway Company.

1. When two defendants join in a demurrer to the complaint, and a good cause of action is stated as to one of them, the demurrer will be overruled.

2. An officer of a corporation cannot sue his company upon quantum meruit for services rendered. In order to sustain an action he must prove an express promise.

3. A resolution of a board of directors authorizing payment to an officer of the corporation for past services, unsupported by a promise to pay for them before they were rendered, is nudum pactum, and will not support an action for their recovery.

4. The express promise of the stockholders to pay a stipulated price to one to perform services as president and attorney is valid, and binding and enforceable upon the corporation, when not in fraud of the rights of creditors.

Marcellus Sutton and Wife vs. Irwin Jenkins.

1. Reciprocal conveyances of the same land between plaintiff and defendant made at the instance and for the benefit of the former, without consideration, no money passing, rests but does not vest the title, and does not operate as an estoppel upon the defendant in claiming the lands under a different source of title.

2. When the land upon which the plaintiff and defendant are tenants in common is sold, under the lien of a subsisting mortgage, to a third person, who acquires the title and possession, and conveys the remainder to one of them, the unity of possession and thereby the relation of tenants in common is destroyed.

3. There is nothing in the policy of our law which prohibits the defendant, who held under a former deed from his father, with his sister, the lands in controversy as tenants in common, from taking under the deed from his father the same land acquired by his father at a sale of the land under a prior subsisting mortgage.

4. When the judgment roll under which defendant's grantor obtained title is referred to only by the title, and the judgment roll is not set out in the evidence, the proceedings will be presumed to be valid, and may not successfully be attacked as void for the want of proper parties.

5. When the purchaser of lands at a foreclosure sale enters possession under a deed, of definite description, such is color of title in him and those claiming under him, and becomes indefeasible at the expiration o seven years', adverse possession.

6. When it appears that the feme plaintiff, with her husband, conveyed her land and took a mortgage to secure the purchase money, foreclosed and the title to the land was procured by the husband to be made to himself, he thus acquired as her trustee, and the statute of limitations will begin to run against her from the date of his deed.

7. The plaintiff claimed as tenant in common with defendant, her part of the land in controversy, under a deed from a common grantor. Defendant denied cotenancy, and established the fact that the unity of possession had been destroyed by a subsequent deed under which he claimed. Held, that plaintiff can establish her title by showing seven years' adverse possession under the conveyance, as color, through which she claimed as tenant in common.

DEED SECURED BY FRAUD.

Jury at Wilmington Awards Plaintiff Property Valued at $10,000—Case Brought by Iredell Meares Comes Up This Week.

Special to The Observer.

Wilmington, April 12.—The jury in the Superior Court which had in hearing the land suit of Miss Louise B. Smith against the estate of the late Roger Moore returned a verdict awarding the plaintiff city property valued at $10,000, holding that a deed to the property was secured by fraud. An appeal is taken for a third time to the Supreme Court.

This week the case for trial is one in which Iredell Meares, a well-known Wilmington lawyer, sues J. J. Wolfenden and the estate of J. A. Meadows, of Newbern, for the balance of an attorney's fee of $25,000 for professional services in the purchase and sale of the famous Green swamp lands in Brunswick and Columbus counties, the complaint alleging that the defendants cleaned up $250,000 on the transaction.

Items From Asheboro.

Special to The Observer.

Asheboro, April 12.—The prospect so far is favorable to a large yield of fruit in Randolph county this year; so also as to the wheat crop. Business is picking up and our merchants are doing a fairly good business. The mills and factories, while not on full time, are all at work, and running without loss. Money is more plentiful and the banks will grant liberal loans with proper guarantee.

Joseph Brittian, a promising son of Attorney John T. Brittian, is critically ill at his father's home on Fayetteville street.

Col. O. R. Cox has exchanged his splendid holdings in this town for the Glenn Anna property in Thomasville and will take up his residence there.