PEOPLE'S COLUMN

All advertisements inserted in this column at rate of less cents per line of six words. No ad taken for less than 20 cents. Cash in advance.

WANTED.

WANTED—2 Providence or Woonsocket speeders 7x3½. Address "Speeder," care Observer.

WANTED—First-class male stenographer. Address own hand writing, stating salary expected. X. Y. Z., care Observer.

WANTED—Permanent position by experienced young lady stenographer. Graduate Winthrop College. Gilt-edge references. Address "Winthrop," care Observer.

WANTED—Position by competent registered druggist. References given. Address "H. K.," care Observer.

WANTED—Five thousand turkeys; highest cash price paid. Answer at once. "C. W. S.," care Observer.

WANTED—Salesman already traveling to sell as side line Linseed Oil and Paint. Commission exceeding liberal. Address Box 67, Richmond, Va.

WANTED—500 men to learn barber trade, and take positions waiting our graduates; few weeks completes; constant practice furnished; scholarship includes tools, demonstrations, examinations and diplomas. Write for catalogue. Moler Barber College, Atlanta, Ga.

WANTED—Twenty-five agents from 22 to 30 years of age, to travel different States. Must be strictly sober and honest, with good references, single men preferred, good pay. Address Lock Box 143, Charlotte, N. C.

WANTED—A trial order for typewritten letters, at low cost. Can furnish one thousand in two hours. Ask for samples and prices. Mail orders receive prompt attention. J. E. Crayton & Co., Charlotte, N. C.

FOR SALE.

FOR SALE—One automatic water pump, tank and compressed air outfit. Thad. L. Tate.

FOR SALE—Second-hand Mosler safe, in good condition, 20 inches high, 18 wide, 12 deep inside. Bargain. Jarrell Machinery Co.

FOR SALE—Two dairy wagons and all dairy equipments, cows, horses, chickens, three farm wagons, buggy and some household furniture. Apply to W. P. Shield, Sunny Brook Dairy.

FOR SALE—Large 30-room brick hotel in thriving town, located at the junction of two of State's principal railroads. One of the best hotel points in eastern Carolina. Owner has good reason for selling. Excellent proposition. Address "Hotel," care Charlotte Observer.

FOR RENT.

FOR RENT—Furnished rooms, modern conveniences. 327 South Tryon St.

FOR RENT—6-room home, new, modern, 313; 5-room home, bath, electric lights $16. F. C. Abbett & Co.

FOR RENT—One newly furnished front room, suitable for married couple or two gentlemen. Southern exposure, electric lights, bath and conveniences. Address "H. L.," care Observer.

FOR RENT—Furnished room, modern conveniences, use of telephone and bath room. 219 W. 9th St.

MISCELLANEOUS.

E. R. KIRKMAN'S barber shop has moved from 215 W. Trade to 20½ South Tryon St.

NO LOST MOTION, no wear, no friction in L. C. Smith Typewriters. The everlasting typewriter. J. E. Crayton & Co., 217 S. Tryon.

NEWSPAPER and job plant Southport Herald (weekly) and job printing plant for sale. Plant includes building and property. Cash. Write at once for full particulars and information. Owner going into other business. H. C. Curtis, Southport, N. C.

JOIN OUR Girls' Club and keep your clothes pressed. Queen City Dyeing and Cleaning Works. 'Phone 248.

STRAYED OR STOLEN—Black terrier bull pup with three white feet, ears and tail clipped. Handsome brass spike collar. Reward if returned to No. 323 North Tryon.

RAILWAY mail clerks. Examination soon. Preparation free. Franklin Institute, Rochester, N. Y.

YOUNG MAN, 20 to 25, fair knowledge book-keeping and stenography for light office position, permanent, best references required. Address "D. T.," Observer.

200 HIGH GRADE typewriters always in stock for rental purposes. You can get what you want and get it quick from J. E. Crayton & Co., 217 S. Tryon.

ROOMS AND BOARD—Mrs. A. G. Vason, 19 West Seventh St.

A LARGE, well-established life insurance company has some splendid openings in North Carolina for men of character and ability who can produce business. Address with references Box 82, Charlotte, N. C.

ANOTHER MOTORIST PULLED.

Mr. Morson McManaway Charged With Running His Car Too Fast Within Fire Limits.

Charged with driving his automobile at a speed greater than that permitted by law within the fire limits, Mr. Morson McManaway was last night summoned to be present at recorder's court this morning to show cause why a fine should not be imposed.

As was stated several days ago when Mr. O. L. Barringer was "pulled" and later on several counts taxed $50 and costs, the speed laws of the city are violated, not once but hundreds of times daily by Charlotte motorists. At $50 per, the Barringer fine, if the ordinance were enforced, a snug little sum, sufficient to macadamize the streets, and do a thousand-and-one other needful things—even to the extent of going to the river for water—might be accomplished. Mr. McManaway had just been to see a sick friend who is very ill in Matthews.

AMUSEMENTS

Campanari's Accompanist a Southern Girl.

When the world's famous baritone, Signor Guiseppe Campanari, appears at the Academy of Music Thursday evening, November 12th, he will be assisted by Miss Lyona Clarkson, a celebrated pianist. Miss Clarkson is a Southern girl, who has spent the greater part of her life in Europe. She studied with Alfredo Barili, in Atlanta, Ga., and later with Rafael Joseffy in New York. And at the age of 17 she was one of the five out of fifty-five applicants to be admitted to the Royal High School of Music in Berlin. Shortly afterwards she began her studies with the world-famous pianiste, Teresa Carreno, with whom she was most intimately associated for several years.

SUPREME COURT OPINIONS

Wildsor Bargain House vs. Frank Watson.

Vendor and Vendee, Agricultural Liens, First Year's Crop, Lien for Second Year, Subrogation, Quaere.

Plaintiff had a valid agricultural lien on defendant's crop under a written instrument containing, in addition, a chattel mortgage on defendant's mule and cart. The remaining crop at the end of the year was sufficient to pay a balance still owing by defendant and, at defendant's request, it was agreed that he should retain the remaining crop, together with the mule and cart, to enable him to make a crop for the ensuing year, the plaintiff to make advancements therefor in a certain amount inclusive of that due for the year preceding. Held: It was competent for the parties to agree that the crop of defendant then on hand, and the mule and cart to be used in making the crop for the second year, should be considered as advancements for that year, so as to constitute a valid lien on the second year crop for its payment. As to whether the party making the advancement would otherwise be remitted for his security to the original lien on taking the second security, Quaere.

(Lowdermilk vs. Bostick, 98 N. C., 299, cited and distinguished.)

H. T. Davenport vs. Norfolk & Southern and Suffolk & Carolina Railroad Companies.

1. Railroads, Right of Way, Construction of, Improper Drainage, Damages.

A railroad company is liable in damages for negligently and improperly stopping the drain ditches on plaintiff's land, so as to injure his crop by the water flowing thereon from his own and adjoining lands, incidental to the building and ditching of its roadbed, though the right of way through plaintiff's land may previously have been purchased or regularly acquired by condemnation proceedings.

2. Same, Evidence, Instructions, Accumulated Waters.

In an action for damages to crops, brought against a railroad company, incident to the negligent construction of the company's roadbed, whereby the crops of plaintiff were injured by the unusual flow of water upon his own and from upper and adjoining lands, there was evidence tending to show that, prior to the building of the roadbed, plaintiff's land was drained by a number of lead ditches into which a number of smaller ditches on his land emptied; that defendant, in constructing its roadbed, crossed all the ditches, leaving openings with pipes in them for the drainage of the lead ditches, but closing the smaller ditches; that for the increase of flow of the water caused by the ditching and construction of the roadbed, the pipes for carrying the water off in the lead ditches were insufficient. Held; 1. The trial judge properly instructed the jury that if they believed the evidence, to award damages in full compensation for the injury arising in consequence of the stoppage of the small ditches; and that the openings for the passage of water through the lead ditches should have been sufficient to allow the water to pass through, with adequate piping, and the ditches properly opened for the passage of the water; 2. That defendant had the right to cut a ditch, when necessary, from adjacent lands along its roadbed across plaintiff's land; but, it was the duty of the defendant to have the leading and lateral ditches of sufficient capacity to carry off the additional quantity of water thereby caused to flow on plaintiff's land.

3. Same.

A prayer for instruction, that a railroad company in constructing its roadbed had the right to accumulate the water which would flow onto plaintiff's lands, and convey the same by lateral ditches in and upon his lands concluding "and for damages incident to this right no recovery can be had," is erroneous, when there is evidence tending to show that there was no sufficient drainage provided by the defendant for carrying it off.

4. Evidence, Opinion, "Expert Testimony Upon the Facts, Improper Drainage, Damage to Crops.

Testimony of a witness who has had personal observation of the facts, and from practical training and experience is qualified to give an opinion thereon, is competent to show the damage to his crop by reason of and overflow of water on his land caused by improper construction by defendants of their roadbed thereon, and he may testify to the number of acres in cultivation of each kind of crop, the amount of each he would have made except for the injury, and the price for which he could have sold it.

W. R. Coleman, et al. Road Commissioners, vs. J. L. Coleman.

1. County Treasurer, Mandamus to Compel Statutory Duty, No "Money Demand," Jurisdiction, "Chambers."

An action of mandamus to compel a county treasurer to pay over to commissioners certain moneys he has on hand, in accordance with the requirements of a statute, is not a money demand, and is properly brought before the judge at chambers.

2. Same, Issues of Fact, Procedure.

If it appears, in an action for mandamus, heard at chambers, to compel a county treasurer to pay over certain moneys on hand, in accordance with a statutory requirement, that issues of fact are involved or that the case has been improperly brought before the judge there, it should be transferred so as to be tried during term, and not dismissed.

3. County Treasurer, Funds, Rightful Custodian, Mandamus.

A county treasurer required by statute to pay accounts against the road fund under certain machinery provided for the purpose cannot be compelled by mandamus to turn over the funds to a road commission, as by the language of the statute he is the rightful custodian.

4. Appeal and Error, Pleadings, Amendment, Discretion.

The refusal of a motion to be allowed to amend pleadings is in the discretion of the trial judge, and not reviewable on appeal.

Action heard by O. H. Allen, judge, at Chambers in Warren, 12th February, 1908.

Straus Gunst Company, vs. T. O. S. Sparrow & Co.

1. Partnership, Retirement of Partner, Notice.

In order for an ostensible or known partner retiring from a firm to escape future liability as a member thereof to a creditor, who had advanced credit to the patnership, actual notice of the retirement must be given, or the existence of such facts must be brought home to the creditor, as would put a person of reasonable business prudence on such enquiry as would lead to knowledge of the dissolution or the retirement of the partner.

2. Same, Questions for Jury.

Upon the question of notice to a creditor of partnership, residing at a distance, of the retirement from the firm of one of the parners, whereon depends the liability of the retiring partner for a debt subsequently contracted with the creditor by the partnership, publication of notice in a local paper is not, as a rule, recognized as sufficient, but when it is further shown in evidence that notice was thus published for 60 days, and that a copy containing the publication was sent to the creditor, these additional facts, while not conclusive, would present a case for the consideration of the jury on the question of notice.

3. Partnership, Retirement of Partner, Notice, Principal and Agent, Knowledge of Agent.

Knowing of the agent of facts relating to matters within the scope of his agency is knowledge of the principal; and when a sales and collection agent has been informed of a retirement of a partner from the firm, and thereafter, at any time, advances credit to it, the retired partner is relieved of liability therefor.

(Cowan vs. Roberts, 133 N. C., 629, cited and distinguished.)

Eureka Lumber Company vs. John R. Harrison and J. H. Oden.

1. Judgment, Nonsuit, Appeal Dismissed, Action Within One Year.

Where there has been a judgment of nonsuit entered against a plaintiff upon the evidence, and an appeal taken to the Supreme Court which was not duly prosecuted, and was dismissed under rule 19, the judgment in the first action is not a bar to the second one, and the plaintiff may bring another action for the same cause within one year after the appeal in the first action has been dismissed. This is clearly so if an additional cause of action is stated and no proof taken.

Action heard by Lyon, judge, May term, 1908, of Beaufort. Plaintiff appealed.

T. L. Emry vs. Edward Chappell.

1. Plea in Abatement, Nature of Plea.

In pleas in abatement the facts upon which the plea rests must be stated and present matters which will defeat the further prosecution of the present action, if proven or admitted.

2. Same, Effect of.

An abatement of a suit is a complete termination of it at law, and the abatement of the main action abates proceedings ancillary or collateral to it.

3. Pleas in Abatement, Relief in Former Action, When Granted.

When it appears that in a former suit pending between the parties the same relief can be afforded as in the present action, the latter action should be dismissed; and it is immaterial what the position of the respective parties on the record in the two suits may be, whether plaintiffs or defendants, if full relief can be had in the action first commenced.

4. Same, Partnership, Dissolution.

In an action by one partner for dissolution of the partnership on the grounds that he had been denied participation in the profits and his partner was mismanaging the firm's affairs and converting its assets to his own use, the answer of the partner, alleged the pendency of a prior action against the firm, brought by a creditor of the firm, in which, by answer, he, in effect, demanded an accounting and dissolution and division of the surplus. All the parties to the former action agreed to a reference, including the taking and stating of an account between the defendants therein, with leave to file and amend pleadings, etc. In the present suit the judge in the lower court passed upon the answer and evidence in the former suit and found them to be as stated. Held, 1. The plea of former suit by answer in this action was a proper plea; 2. The plaintiff in this action can obtain the same relief in the former action, and have the necessary ancillary remedies which may be required to protect his interests pending the litigation, by proper application to the court; 3. It was error in the lower court to overrule the defendant's motion to dismiss in this action.

5. Plea in Abatement, Action Dismissed, Discretionary Powers of Trial Judge.

When an action is dismissed upon plea of a former action wherein the full relief demanded can be had, it is in the discretion of the trial judge to stay further proceedings in the present action until an opportunity is given to correct the record in the former suit so as to embrace further matters set out in the present suit, or he may dismiss and require plaintiff to start anew after having the record in the other suit amended.

Action heard 20th May, 1908, at Chambers, Kinston, Lenoir county, by O. H. Allen, judge.

W. D. Robertson vs. Atlantic Coast Line Railroad Company.

1. Penalty Statutes, Carrier's of Goods, Benefit of Shipper, Party Aggrieved.

When the consignee ships goods to be sold for his own benadt he is the "party aggrieved" under Revisal, Section 2632, and was the proper party plaintiff, Revisal, Section 490.

2. Penalty Statutes, Carriers of Goods, Suit for Damages and Penalty, Joinder of Action, Contract, Merger.

An action for damages against a carrier for a lost shipment and one for the penalty given by Revisal, Section 2632, do not merge into each other. They arise on contract and may be joined in the same action, Revisal 2634.

3. Penalty Statutes, Carriers of Goods, Defense, Burden of Proof, Evidence.

The burden of proof is on the carrier to show that it is relieved of the penalty prescribed by Revisal, 2632, under the provision thereof that the goods were "burned, stolen or destroyed." The facts that more than one carrier handled shipment on a through bill of lading, that the goods were placed in defendant's car by the initial carrier, that search had been made therefor, without stating how thorough, and the absence of evidence that it had since been seen, are no evidence that they were "burnt, stolen or destroyed."

4. Penalty Statutes, Carriers of Goods, Action for Penalty, Form of.

Under Revisal, Section 2632, the action for penalty is given direct to the party aggrieved, and will not be dismissed because not brought "on relation of the State." If otherwise, it would be a mere informality which could be remedied by amendment.

Action heard by W. R. Allen, judge, who found the facts by consent, November term, 1907, of Bertie. Defendant appealed.

Eureka Lumber Company vs. J. L. Satchwell, et al.

Mortgagor and Mortgagee, Assignee of Bond, Co-principals, Debtor and Creditor, Subrogation and Contribution, Restraining Orders, Questions for Jury.

E. and W. executed their bonds to S., secured by mortgage on two tracts of land held by each in severalty, which was subsequently assigned to defendant M. W. conveyed his tract to plaintiff, and it was sold under foreclosure and purchased by defendant G. The plaintiff obtained a restraining order to prevent payment of the purchase price and completion of sale, on the ground that E. and W. were co-principals and that as W. was insolvent it is entitled to be subrogated to his rights, and to contribution against E. Held: 1. Contribution can arise only after payment by one of the debtors; 2. Whether W. can recover out of E. is a question for the jury; 3. The mortgagee, or the assignee of the bond, cannot be required to defer collection of his money and the enforcement of his security till the debtors thus adjust their liabilities between themselves; 4. The restraining order was properly dissolved.

Action heard by Lyon, judge, on petition to dismiss a restraining order, May term, 1908, of Beaufort.

Plaintiff appealed.

John T. Smith vs. Cashie & Chowan Railroad and Lumber Company.

1. Appeal and Error, Costs of Superior Court, Final Judgment.

With but few exceptions, as, for instance, where continuances are granted upon agreement of a party to pay preceding costs, the costs of the Superior Court follow final judgment.

2. Same, Successful Appeal, Costs an Offset to Final Judgment, Transcript and Certificate.

When plaintiff recovers final judgment in the Superior Court after two successful appeals by defendant, the costs of all the trials in the Superior Court should be taxed against the defendant, but it is entitled to offset against the final recovery all the costs properly paid by it on its successful appeals, including the transcripts and certificates.

Motion to tax costs, heard by W. R. Allen, judge, who found the facts by consent, November term, 1907, of Bertie, Defendant appealed.

N. C. Hughes et al vs. E. R. Crooker.

1. Contracts, Conditions Precedent, Parol Evidence.

When a promissory note is given in pursuance of the terms of a written contract, evidence can be introduced of a contemporaneous oral agreement, made as a part thereof, to the effect that the note and contract were executed and given upon a condiion precedent to their validity, which has not been performed. This does not vary by parol the terms of the written instrument, but postpones its operation until the happening of the contingency.

2. Same, Evidence Sufficient.

When the defense, in a suit upon a written instrument, is that it was agreed by plaintiff's agent that the transaction was to be regarded as incomplete until the agent had done a certain specified service, evidence that the agent told defendant that he was absolutely safe for the contract was not to be regarded as finished until he, the defendant, signed his satisfaction thereon, which was to be upon the performance of the condition, is sufficient upon the question as to whether the contract was made upon that condition.

3. Contracts, Conditions Precedent, Breach of, Negotiable Instruments, Payment of Note, Damages.

A holder of a negotiable instrument, who has violated his agreement with the maker by negotiating it without performing of a condition precedent to its validity is liable to the maker in such sum as he may have lawfully been compelled to pay thereon to an innocent purchaser for value, without notice.

Action tried before . H. Allen, judge, and a jury, December term, 1907, of Beaufort.

Nathan Simmons vs. The Defiance Box Company.

1. Summons, Judgment, Improper Service, Motion in the Cause.

A motion to set aside a judgment for lack of services is the proper procedure, and it is for the court to find the facts and correct the record to speak the truth. If, as a fact, there was no proper service, or appearance, the judgment is void.

2. Procedure, Motion to the Cause, Direct Proceedings.

A motion in the cause, when appropriate, is a direct proceeding.

3. Corporations, Sunmons, Service, Foreman, Proper Officer.

Service of summons on a foreman of a corporation, who acts under orders of a superintendent who is present at the time, is not upon a person on whom valid service for a corporation can be made.

Motion by defendant to set aside judgment for want of service, heard by W. R. Allen, judge, February term, 1908, of Craven. Motion denied. Plaintiff appealed.

Joseph E. Jones vs. Allie Jones, Admx., et al.

1. Contracts, Lands, Specific Performance, Equity will Enforce, When.

While specific performance of a contract to convey land is enforceable only in the sound equitable discretion of the court, and not as a matter of right, in the absence of fraud, mistake or other element making such performance inequitable of a hardship, the courts will always grant the relief demanded.

2. Same, Administrator, Mortgagor and Mortgagee, Vendor and Vendee.

Plaintiffs, in an action to enforce specific performance of a contract to convey lands, made by deceased and his wife, brought suit against the wife as executrix of her husband, and obtained judgment that the administratrix execute and deliver a deed to him upon payment of the purchase money on a specified day, and, in default, the land be sold at public auction, for cash, etc., naming a commissioner; also, that the cause be retained in regard to the disposition of the purchase money. The case was inadvertently dropped from the docket by the clerk, and, at a subsequent term, was reinstated on defendant's motion, the judge finding that the administratrix failed to advertise the land as directed, but had since then made a deed to plaintiff upon payment by him of purchase money. Held, 1. The judgment, in effect was to declare the holders of the legal title trustees to secure the purchase money, the same result would follow upon equitable principles, and her deed would be valid.

2. The decree of sale of the land as made by the court was a proper one, as the relation of vendor and vendee, under such conditions is, for all practical purposes, that of mortgagor and mortgagee.