CHARLO' TE, DAILY OBSERVER, SUNDAY, MAY 24, 1909.

ABOLINA COLLEGES in Page Eight]. of kirkpatrick and

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Current PD College. Female graduate Address and de dress by Dr.

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Correspondence of The Observer.

os who tic year finished, closed the institudays with for Ander- the pupils Friday night.

Wash attend ginning Wednesday night. It was the most successful, too, in that the chos-

graduating in players and singers of the conservered in for the more Wednesday, was given over to days. the stu idents. was delivered by ex-Senator H. Due 11118 trees ed are very institution.

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TRINITY.

CATORS Elgat d Gilmer

on trol is. 27 TISES at that oth Caroallege for

prize for the best scholarship for the year went to Mr. Jackson Townsend, of Robeson county. Mr. D. J. Walk-(Continued from Page Four). (Continued from Page Four). er and J. R. Pelletter being close sec-

The alumni address by H. P. Lane, of Reidaville, was a gem of its kind and the annual address by Clarence H. Poe ought to have been heard by every citizen of the State. In addition to being a pleasing and graceful speaker. Mr. Poe always goes to that the unfortunate protestor against the heart of things and gives his the Myth had lost his paddle, been hearers and readers something worthy of their attention and thought. The ball was largely attended and rowned the week's exercises as the principal social event. A large number of visitors from a

and added to the pleasures of the oc-

Durham, May 22 .- The commencement exercises of the Southern Conservatory of Music, the tenth achoias-

tion in a brilliant concert given by This was the third of the series be-

servatory for the most part filled the programme. . The first of the nights, the children. Thursday night was the occasion of the annual address, which Foushee, and the diplomas, certifi-cates and medals were awarded. Mr. Foushee presented these and in the ceremony spoke handsomely of the

The conservatory has recently been visited by Dr. John A. Simpson and Mr. Meares, of Raleigh, who are on Last year when they visited in professional capacity this place, they pronounced the work as thorough as is obtainable in any conservatory of the North. They passed upon the work of the pupils this year and their judgment is responsible for the diplomas and certifi-

cates. Five graduates, the largest class in the conservatory's history, were given their diplomas. They were: Misses Felicia M. Kueffner, of Durham; Helena E. Morris, of Hendersonville; Minnie L. Patterson, of South Boston, Va.; Fannie Rozier, of Durham, and Mr. James H. Umstead, Jr. of Durham, the first man to take a plano diploma.

In the plano testimonial course Misses Bessie M. Baxter, Emma Eloise Mabel McClaire McCotter. Bolton, CLOTH: Pluma Owens, Alma Rigsbee, Lottie Riley and Olivia Thaner were given distinction. Misses McCotter Y.M. and Elizabeth Lee Newbern received testimonials in voice; Miss Hattle Brinware the teacher's certificate in voice, and Miss Mary Wilson, of Thomas-ville, took the first violin certificate given by the institution. Teachers' ertificates in piano went to Misses Gertrude Bell, Mary Anne Burnett, Effle Grace Cockerham, Lottie Estelle

Critcher, Ormie Gibson Edwards, Sarah Jane Hoffman, Clyde Kearns, Lena Jane Kittrell, Cornella D. Mc-Laurin, Beulah Catherine Norment, Elizabeth Pauline Proctor, Mary Isa-belle Tarkenton, Addie Ray Upchurch and Lydia Cynthia Winslow. The medals for improvement went to Miss Zalena Allen, of Miss Brin-

son's class; to Miss Thelma Cates, of Miss Morris' class, and to Miss Blanche Steele, pupil in violin under Miss Kinne. The W. R. Murray medal for improvement in voice went to Miss Elizabeth Smith, of Goldsboro; the D. W. Newsom medal in

for

voice was won by Miss Hattie Brinson, plano teacher; Miss Grace Beckwith ook the medal offered by Jones & Frasier to Prof. G. W. Bryant's class;

medal for class-work excellency.

MURDEROUS ASSAULT.

the A. D. Zachary medal

1775, resolutions were passed declar-

ing their independence of Great Britain." Unfortunately, so cocksure flowing out to the self-exiled editor, a reporter rushed into the office, and of his memory was the secretary that breathlessly announced. "Hemphill is he managed to stuff into his recollecin town." There was little time for tion of the resolutions some of the conjecture, before ordering out the language of the Declaration of Intereception committee, and gathering pendence signed on July 4, 1776, more and unusual movement of its train, conhis the Myth had lost his paddle. been cal. blown up Cooper river, through the However, the resolutions had been "cut," into the Santee and up the Congaree, did not satisfy. But whatever the calamity that brought bim sette at the time, and from an old newspaper file-that dusty tomb of within 80 miles of the horrid festival

at Charlotte we were determined to distance attended the commencement do honor and reverence to the martyr to conviction. The staff of The State was beat to quarters and awaited the coming with duly sympathetic countenances.

A scout rushed in, reporting, "He cannot be found; nowhere in town." of June 30, 1775. It is made more than Before the young man could be rereasonably certain that the Mecklenbuked for superficial search, the teleburg Declaration of Independence was phone bell tingled. "Yes, yes, what is born out of freedom-loving breasts on "This is the city editor. We the 31st of May, and not the 20th of caught sight of the major in a passing May, of the year 1775. cab; took auto and followed. Got to But local custom clings tenaciously Union station as he stepped aboard train bound for Charlotte. Said to an idea and concerns itself little he was going to the celebration; expected with the accuracy of mere dates. to have a big time."

It is not often a newspaper office is shocked, but it was fully thirty min- the Angel of Truth are gainst him. utes before the even tenor was restored.

Yes, if made to bear witness we situation is that the Declaration of magnet. A myth could not draw the of President Taft. The date isn't the editor-in-chief, aganst his principles, thing anyhow. Mecklenburg, as a gal-210 miles. thing anyhow. Mecklenburg, as a gal-lant little colony, defied King George

The only hope of the editor is to all by herself, and before any other North pole to which the needle of his Post. spirit turned .--- Columbia State.

"President Taft," remarks The Chattanooga Times, "is going to help the North Carolinians to celebrate the 134th anniversary of the adoption of the Mecklenburg Declaration of Independence, claimed to have been accomplished in May-the exact date being in question-1775. As many ferocious assaults have been made upon the historical accuracyy of the Inci- Father, otherwise would He have so dent, what President Taft shall have richly endowed her with the heavenly to say about it will be a matter of gifts of sympathy, love, purity, paeditor-in-chief, against his principles, tience and intellect, a winning grace, lina but all over the country. Presi-Taft has a way of getting at the plicity and integrity of character as dent bedrock of things, especially those requiring judicial, as well as historical. accuracy, and he will doubtless sift all the evidence so as to put the case before the jury-the general public-as that a verdict may be rendered without the embarrassment of any reasonable doubt either way.

faculties He called her away as she The Times, we fear, is entirely too slept, on the New Year's night, a call optimistic in its forecast of the Presi- so quiet, so gentle, so secret, in the dent's power and influence in the darkness of the night, that she alone premises. We freely admit the wide heard and answered the call, extent of his learning and informa- awake in the glorious dawn of an untion, and also his peculiar gifts in ending day! It is the way of rettling things, but in the His Beloved Sleep!' It is thus "He Giveth

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virtues.

rare as they are beautiful?

who came within her induence

And finally, without pain,

teaching and transmitting to each and

all a portion of these God-bestowed

in the fullness and ripeness of

case referred to he has a job that Beloved she was to us all, and would give Solomon himself a case of hard it is to look upon the vacant dodging and side-stepping. The chair and know her voice will be no chances are that he will please nobody more heard in its accents of loving in this matter. The North Carolinians advice, encouragement or warning, believe, as firmly as they believe in words which were never without the value of peanuts, that a Declara- weight, never disregarded.

tion of independence was promulgated | We have, as it were, lost our beacon at Mecklenburg more than a year prior light which had so unerringly guided to the Philadelphia deliverance, and us through all these years, since 1859. you couldn't get this belief out of when Mrs. Walker became vice them with a mallet and chisel. It is regent for North Carolina. May the vice part of their articles of faith, and any after-glow of this light, undimmed one who attempts to discredit the still show us the way as years pass claim will be put down as a specimen on.

Mrs. Walker was the daughter of of monumental ignorance and obduraas Mr. Taft himself will learn if he Governor Morehead, one North butts his head against that stone wall Carolina's most distinguished sons, North Carolina faith. But on the other hand he will be to have centred in this rare woman. o better off if he falls in with the Artist and musician, as well as prac North Carolina idea and adds the tical farmer and gardener, associated from childhood with all that was re-to sustain the Mecklenburg claim. He fullmay not only assure them of his full belief in the soundness of their contention, but may produce farts, figures and historical data to place Mecklenburg in the forefront as the place where the idea and place of American Independence was conceived passed and gone, charming companion, scion of a race Entering our association at its inception she knew its poverty, trials, discouragements; but, with other remarkable women whom our first regent so wisely appointed, Mrs. Walker labored with unfailing courage and hope that never flagged. She liv ed to see her wildest prophecies fulfilled and to witness the success she had so helped to ensure. SUSAN E. JOHNSON HUDSON,

Charles Redman, by next friend, VS. Norfolk & Western Railway Company. 1. Railroads, Master and Servant, Wara-

ings, Negligence, Proximate Cause, A railroad company is responsible for damages in the failure of its engineer to give forewarning of a sudden unexpected than a year later, and it was this slip sisting of an engine and flat cars equip-that has inclined history to be skepti- ped for ditching, when the proximate sause of an injury to an employe thereon while engaged in the course of his duties,

published in The South Carolina Ga- 2. Railroads, Master and Servant, Signais, Warnings, Negligence. When an employe on a ditching train many a precious historical fragment- is injured while sitting on a flat car. George Bancroft managed to dig out where he should have been in the disevidence corroboratory of Alexander's charge of his duties, and it is shown that, story in all save the date and a portion while actually engaged, his position of the language used. From this old should be standing, but, at the time. paper and a copy of a letter sent to from the nature of his employment, it the home government by Governor was not then required, the mere fact of Martin, of North Carolina, under date his sitting at the time of the injury. when he was in position to promptly dis charge his duty when called upon, as required, does not relieve the defendant of the duty to signal or give forewarning of an unusual and unexpected jolting of the train caused by the sudden moving of the engine.

3. Same, Contributory Negligence.

When an employer on a ditching train What grandsir sail is good enough in the discharge of his duties, is suddenat a place where he should have been for us, though the nine books writ by ly and unexpectedly thrown by the negligent act of the engineer of the employer Old Mecklenburg isn't going back on upon a piece of machinery known by him John McN. Alexander, not if she can to be dangerous, the fact that he threw help it, and if that's an anachronism his hand forward, and got it caught in shall have to say that the logic of the it isn't treason. Perhap it is just as the machinery to his injury, is not eviwell to let the date stand fixed for all dence of contributory negligence, when Independence of Mecklenburg has future time, whether history likes it the act was done to save further injury. been libeled. A myth cannot be a or not, by the speech and attendance & Railroads, Master and Servant, Place to Work. Duty to Employe, Contrib-

utory Negligence It is the duty of the employe to select

ach place to work as will be prove that Taft, and not that which colony did, and that's cause enough to dangerous when the circumstances admit he has proclaimed a myth, was the give her sons pride.-Washington of a choice, and when the evidence is sufficient, it is correct for the trial judge to charge the jury, that if plaintiff selected a dangerous place to perform his duties when there were other places, or positions that were available and safe. and that a man of ordinary prudence would have selected a different place than that occupied by plaintiff at the time of the injury, and the plaintiff's failure to do so was the proximate cause. the plaintiff would be guilty of contributory negligence and his recovery bar-

er Charge.

trial judge to the jury is not a basis for reversible error when, in the instructions, the law applicable is correct ly charged.

jury, November-term, 1908, of Person.

graph Company.

her sonable Stipulations, Demand in Sixty Days. A stipulation written on the back of a telegraphic message requiring, in effect, that a claim for damages should be presented within sixty days or recovery thereon would be barred, will be upheld as a reasonable regulation when it appears that the party claiming damages knew of the company's default more than sixty days before the action was

> that time. Action tried before Long, J., and a Jury, January term, 1909, of Durham Plaintiff appealed.

Mollie C Parker vs. North Carolina Rail-

Railroads, Lessor and Lessee, Plead ings. Allegations of Lease. Demurrer, When it is substantially alleged in the omplaint in a suit for damages against a railroad company, that plaintiff's inestate was killed while in the course of

Held: (1) In the absence of an, evidence to the contrary, the law will presume the discharge was based upon the res-feration of the testator's mind; (2) That the erroneous admission in evidence of

the Book of Settlements, in the office of the Superior Court clerk was harmless error.

Evidence, Wills. Mental Capacity, Burden of Proof. Instructions.

After placing the burden of proof on the caveator to establish the insanity of the testator at the time of making the will, by the preponderence of the evidence, it is correct for the judge to charge, in effect, that if the jury find from the evidence that the testator signed the writing offered in evidence as and for his last will, that at the time he had mental capacity to know and understand what he was soing, to know his property and its disposition. his relationship to his property and the persons benefitted. the nature and effect of his act, he had mental capacity sufficient to make a will.

Marler-Dalton-Gilmer Co. vs. Wadesboro Clothing and Shoe Co. Writs, Recordari, Purposes, New Trial.

Erroneous Judgments. A writ of recordari may issue from the Superior Court to a Justice's court for the purposes of obtaining a new trial of the case on its merits or reversing an erroueous or false judgment.

1. Justices of the Peace, Jurisdiction. Non Residents, Joinder of Partles, Summons, Service, Appeal and Error. When a plaintiff has sued a resident and non resident of a county in a justice's court, issued the summonses under the provisions of Revisal, Sec. 1447, and obtained judgment thereon, and the Superior Court has denied a petition of the non resident defendant for a writ of recordari based upon the jurisdictional ground of improperly joining the resident defendant, the judgment of the Superior Court will be upheld when it appears that the resident defendant was joined in good faith and not for the purpose of conferring jurisdiction.

Process, Summons, Endorsements, Presumptions. the

The return upon a summons by proper officer that he had served it is ima facie sufficient, as it implies that it has been served as the statute directs, and the service will be upheld as valid in the absence of evidence to the contrary

Motion for writ of recordari, heard by Councill, J., September term, 1909, of Motion denied and defendant Forsyth. appealed

Walter A. Sutphine et al vs. James A. Sparger et al. Roads and Highways, County Commissioners, Appeal, When Taken. Exceptions to a report of road commissioners in proceedings to change the grade of and straighten a public road, under Ch. 407. Laws of 1907, should be made at the confirmation of the report

the county commissioners and ap neal should then be taken, to be effective. County Commissioners, Appeal, When Docketed, Procedure

Appeals from orders of the county com missioners are governed by the rules applying to appeals from a justice of the peace, and to be effective must be docketed at the first ensuing term of the Su perior Court, or the appeal will be dismissed.

Same, Appeal Bond. In order to perfect an appeal from an order of the county commissioners it is necessary to give the appeal bond required by Revisal, 2690.

Roads and Highways, Injunction, Mo tion to Dissolve, Supreme Court. A motion to dissolve an order restrain

ing the working of a public road ordered by the county commissioners, under the provisions of Ch. 407, Laws 1907, will be allowed in the Supreme Court, when it appears that the appeal from the order for judgment upon the issues should of the county commissioners was neither have been granted. properly taken nor perfected.

otion to dissolve a restraining

jury, at January term, 1909, of Cabarrus, Defendant appealed.

J. T. Bordesux, Admr., vs. Atlantic Coast Line Railroad Company Evidence, Nonsult, Walver,

A motion as of nonsult upon the evi-dence made at the close of plaintiff's evidence and not renewed at the close of all the evidence, is waived and will not be considered on appeal.

Master and Servant, Raffronds, Yards, Employes, Negligence, Rules of Employer, Enforcement.

The failure to enforce a reasonable rule made for the protection of employee of a railroad company, engaged in ropairing cars upon an extensive repair and switching yard, is evidence of a waiver or abrogation of the rule.

3. Master and Servant, Railroads, Rules Habitual Violation, Employer. Knowledge, Walver.

A printed and bulletined rule made for the safety of employes engaged in repairing cars on an extensive repairing and switching yard of a railroad comrequiring that flags of warning pany. should be placed in a certain manner at such times, will not relieve the company of liability for its negligence when the employes fail to observe the rule while engaged on "short jobs," when it was actually or constructively known to the company that the rule was habitually and continually diregarded in such instances to such an extent as to amount to an abrogation

Master and Servant, Railroads, "Kicking" Cars, Railroad Yards, Rules of Safety, Enforcement. Employer.

While the rules of liability of railroads n regard to "kicking" cars, or making "flying switches" at a public crossing. do not apply to the constant changing or switching of cars on extensive repair-ing and switching yards, it is still the duty of the company to establish and enforce proper rules for the protection of the employes in such yards from injuries otherwise likely to occur to them when engaged in repairing cars therein.

Master and Servant, Railroads, Rules Walver, Contributory of Employer. Negligence, Evidence.

When there is evidence of a waiver by a railroad company of its rule that employes, at work on cars on its extensive repairing and switching yard, must put out blue flags as warnings, and that plaintiff and two other employes agreed that the job would be a short one, from a half minute to two minutes, dis cussed the matter and decided not to put out the flags, but have one of their number keep a look out, and while thus engaged the plaintiff's intestate was killed by a shifting engine "kicking." at fast speed, cars onto the one where he was working, the question , of contributory negligence is one for the jury.

Carolina Alexander vs. Metropolitan Life Insurance Company

Life Insurance, Applications, Untrue Statements, False Representations. Statements made in an application for fe insurance upon which the policy was issued, that the applicant had never had any desease of the kidney or been under he care of a physician within two years preceding the date of the application, are material as an inducement for the insurance company to issue the policy, and when untrue will invalidate it.

Same, Judgment Upon Verdict

It was established by the verdict, in a suit upon a life insurance policy matured by the death of the insured, that certain material statements in the application, upon which the policy was issued, were untrue, though no false representations had been therein made by the applicant. Held: It appearing that the company had been imposed upon from the very nature of the representations, it was immaterial whether the representations were fraudujent or not, and the defendant's motion

Appeal from Surry, heard by Webb, J., John P. Nail vs. Brown and Williamson Evidence Rejected, Subsequent Offer to Admit. Harmless Error. When the trial judge has excluded certain evidence which he thereafter, at the lose of all the evidence, offered to admit, and there is no suggestion that the witnesses had been discharged, the error, if any, was cured. Instructions, Special, Offered Too Late, Appeal and Error. It is necessary to offer a prayer for special instruction in apt time, and the refusal of the trial judge to give a cor rect instruction when tendered too late is not reviewable on appeal. Negligence, Safe Appliance, Selection Rule of the Prudent Man. It is culpable negligence and not a mere error in judgment which renders an employer liable to the employe injured by reason of the use of an appliance furnished with which to work; and when the employer has selected one of several methods which are approved and in general use, with that degree of care that a person of ordinary prudence would have used, no liability will attach by reason of such selection.

IN MEMORIAM. Mrs. Letitia Harper Walker Died January 2, 1908. at her esidence, Spray, North Carolina Mrs. Letitia Harper Walker, Vice Regent Mount Vernon Ladies' Asaociation for North Carolina. "He giveth His beloved sleep. Beloved she was of the Heavenly red.

5. Instructions, Contentions Stated, Prop The contention of the parties stated by

an unfailing judgment, with a sim He gave her also the blessing of a long life whereby her example should elevate Action tried before Jones. J. and a

R. N. Sykes vs. Western Union Tele-

Telegraphs, Negligence, Message, Rea-

ought, and made no claim therefor in

road Company.

DAVIDSON.

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The miscarriage of an attempt to H. HICPHY ommit murder has created a at c'linsensation in Green county. John How-III sume ell, white, and Ben Palmer, colored, ssionary two young men made a deadly attack made upon Mr. Tom Farmer, a well-known resident who lives about seven miles fore the also from Snow Hill, while he was in his Met on+ room at night in the act of retiring. at Rox-Mr. Farmer was severely wounded, but managed to make his escape. His asbadiotra sailants have been captured and are here now in Snow Hill jail. They confess-* ment ed to the attack and assault that they faut were hired to kill Farmer by his wife ffernis it is said that Farmer and his wife hney]very unhappily together, were constantly at outs, which give the ethis story more or less color.

> Positively Evil-Thinking. Anderson, S. C., Daily Mail.

"We understand now why Charlotte then (is making such a to-do over President Taft. Charlotte wants an appropriation of \$100,000 for her postoffice building."-Anderson Daily Mail. "For the information of our benightd brother we will state that Federal appropriations for public buildings as will well as for all other purposes are the made by Congress and not by the President."-Charlotte Observer. Oh,

sure. But the hurrah over President Taft, who is quite popular in Con-gress, may impress the Congressmen with the idea that Charlotte is a \$100,-000 town.

No Race Suicide There. Rockingham Anglo-Saxon.

Col. Dan Morrison was down In Cumberland county last week and he came across a very prolific family. A Mr. Jones, son of Mr. Reuben Jones, who once kept the Purcell House in Wilmington, is the father of thirteen living children. Mr. Jones has only " as been married six years-five pair, and the last three were triplets. No wonder Cumberland is growing in population.

Before Noah.

Norfolk Virginian-Pilot. A North Carolina paper and Mr. A North Carolina paper proudly points to the advertisement for rent medal Sim-Glenn Go slow, brother: Cain killed Abel Glenn before the distillation of ardent spirand the its was, ever discovered.

ex-North Carolina faith.

cellency in playing went to Miss Fan-nie Rozier, though the board of examiners awarded it to Miss Felicia M. Kueffner, who also won it last car and is debarred by the rules of the institution. Miss Carnelia Mc Laurin was given the S. M. Snider The conservatory gives the world this spring a coterie of well-trained teachers and its graduates gave re-cently a series of brilliant recitals. place where the idea and plan of The four young ladies, Misses Kueff-Morris, Patterson and Rozier, and delivered to the world. are dashing players and Mr. Umstead

This, we say, would make him solid with the old North State and its inwill spend another generation in the of music. Young Miss Wilson. habitants, and bind them to him with in violin, is perhaps the best player that the institution has trained betooks of steel that no human power could loosen, but how about others? ginning as a raw pupil. She is an In South Carolina and Virginia they unusually attractive girl, uses a graceget their backs up whenever the Meckful bow and plays with understandlenburg matter is mentioned and de-Miss Kinne, the teacher, spent clare that no such declaration was last summer in Germany, and came ever conceived, executed or promutback additionally equipped for a tutorship that she has shown herself gated in North Carolina or any other part of the habitable globe, either in 5, or at any other period of record-

ed history. If the President falls in with the North Carolina claim, and makes them believe that it is histor-Ically invulnerable, he may as well cut South Carolina and Virginia out of his of visiting acquaintances. They would never speak to him again.

big But if he tries to "split the differas we may say and undertakes ence, will be still worse, for both will repudiate him, and set him down as a trimmer who wants to hold with the hare and run with hounds, and all the disputants will take sides against him, North Carolina believes in the declaration, the others repudlate it, and how can he make himself solid with both" He can't do it, and our advice would have been to plead sickness, prior engagements or something else and stay away from the celebration. That way, and that way only, lay safety. Above all, he must watch out for Deacon Hemphill, of The Charleston News and Courier -- Montgomery Advedtiser.

To-day the President will be at Charlotte, N. C., helping the Tar Heels celebrate the reckless disregard their forefathers had for their necks. About the time the Mecklenburgers were drafting their document of defiance King George 111 had his hands full up around Lexington and Bunker Hill, but could he have got Sir Henry Clinton to Cape Fear a little quick er doubtless most of the signers would have soon dangled from a gib-bet, and been helped there by the hands of their neighbors, too, for at that time both of the Carolinas were full of Tories stuffed to the limits of their red jackets with zeal for the King.

However, Sir Henry was a little late,, and in the hubbub of things the foolhardiness of the Mecklenburgers Some soup from a Hatteras turtle,

passed unnoticed. Historians long had their doubts Some clams from the Pamlico waters about there ever having been any declaration of independence at all. and it was the mistakes of one Joan McN. Alexander who tried to write history from his memory, which most beclouded them. As it is, they are still dubious about the date, and it is President Taft and the burghers of

Charlotte to carry on their celebra- Most tasty and spicy of dishes tion to-day history is indulging itself | We hope to place under his n nisms of which it is so fond. This John A memory pleasant and new-McN. Alexander, who claimed to have The tasts of a barbecued pigiet been secretary of the Mecklenburgers' meeting, swore in 1800 that "at a

States a state second

Not Exactly Guilty. Richmond News Leader.

"Some iconoclast has attacked the authenticity of the yarn about Sergeant Jaspeh jumping over the parapet at Fort Moultrie long years ago and restoring the American flag to its place after it had been shot away by the enemy." Dollars to horsecakes the attack was inspired by The Charlotte (N. C.) Observer in retaliation to hold with both sides, his condition for the skeptical flings of The Charles-

ton News and Courier at the Mecklenburg Declaration of Independence.

Troys Sanatorium. The Montgomerian.

Troy is to have a large sanatorium. Work is progressing nicely on the building, which will be one of the finest in this section of the State. The sanatorium will be up-to-date in ev ery respect and will be well equipped for all surgical work, diagnosis and treatment of all ordinary diseases. This institution will be owned and operated by Dr. A. F. Thompson,

[For The Observer. FEEDING OUR WILLIAM.

Ob. what shall we feed to our William To keep him from fading away week or so hence, on his visit To us, on our own gala day? We don't want to load him with 'possum We're anxious to show something new-A barbecued shoat is suggested, With lashings of hot Brunswick stew

The canvas back's now out of season, The terrapin's hardly yet ripe. "Tis a little bit late for hot sausage And William may not care for tripe. We heartily wish to indulge him And, truly, with this end in view There's nothing beats barbecued piglet

Topped off with some hot Brunswick stew.

A sheepshead from Shackleford's Point, And rich Yancey beef, for the joint; A trout from the streams above Ashe ville.

A frying sized chick on the side stewed Chatham rabbit, with gravy-A dish that is trusted and tried.

more than likely that in permitting All these we will have to fall back on Should anything happen to those We hope to place under his nose in one of those ridiculous anachro- He'll take with back to the White House Warmed up by a hot Brunswick stew. -H. H. BRIMLEY. his employment by defendant's lessee company operating the railroad of the defendant as its lessee, the complaint is not demurrable on the ground that it

did not sufficiently appear that the lease was in force at the time of the injury. Railroads, Lessor and Lessee, Negli-

gent Killing, Lessor, Damages. Defendant lessor railroad company is table for the negligent killing of plainiff's intestate by its lessee railroad company. Logan vs. R. R. Co., 116 N. C. 940 and Brown vs. R. R. Co., 131 N. C., 455, cited and approved.

Pleadings, Demurrer Frivolous, Appeal and Error, Procedure

The Supreme Court holding a demurrent udgment by default and inquiry to be entered in the trial court, when no moion for such judgment had been made n the lower court, and no exception to he judge's order allowing an answer had been taken and appealed from. Revisal,

Secs. 656 and 472. 4. Pleadings, Demurrer, Frivolous, Dis-

cretionary Powers, Answers, It is in the discretion of the trial judge to permit defendant to answer, after overruling a demurrer to the complaint, though the demurrer were frivolous. Cause heard on demurrer to complaint before Jones, J., August ferm, 1908, of Durham. Defendant appealed.

Jacob Cook vs. Western Union Telegraph

Company. Power of Court, Pleadings.' Amendments. Discretionary Power, Findings,

When it appears that a cause was tered as continued by consent for the term by the judge at a former term, in he absence of counsel in the case, by mistake of the judge, the court there-after, at the same term, had the power and discretion to allow defendant to amend his suswer and set up a further defense arising under the contract sued on. The discretionary power of the ourt to allow amendments to pleadings in term, when matters are in fieri, dis-

cussed by Walker J. Appeal from order of E. B. Jones, J. entered September term, 1908, of Alamance, by defendant.

In re Will of James M. Thorp. Evidence, Statements, Slience, Admis-

Statements made in the presence implied admissions, must have been made on an occasion when a reply would properly be expected; and testimony as to statements made in a plea for mercy to the court by an attorney, in the hearing of his client and not denied by him, as to his mental incapacity, is inadmissible upon an issue of divisavit vel non attacking the probate of his will on that ground.

Evidence, Wills, Devisavit Vel Non, Records, Books of Settlements, Originals, Copies.

Upon an issue of divisavit vel non upon the question of the mental capacity of the testator to make a will, the Book of Settlements kept in the clerk's office is still pending, and the solicitor should in accordance with the provisions of proceed to try the defendant again under Section 21, Chapter 156, Laws of 1883, recording copies of original papers, is not competent evidence of the contents of such papers. The original papers on the Municipal Corporations. Cities records of the executive committee of Towns. Widening Streets, Damages. the State hospital are competent. Quarre. Evidence, Wilk, Devisavit Vel Non,

Harmless Error. Upon an issue of devisavit vel non the most exclusively to his mental condition during the last few years of his life. order, 29 February, 1909, at Wentworth. B. A. Price et al vs. G. O. Griffin and

Wife. Deeds and Conveyances, Interpreta-

tion, Words and phrases, "Surviving Heirs," Burplusage. The word "surviving" in a conveyance of land "to P. for life and at his death to his surviving heirs," is surplusage.

and cannot affect the legal interpretation of the words employed. Same, Rule in Shelley's Case A conveyance of an estate to "P. for

life and at his death to his surviving heirs" conveys the fee simple to the a complaint frivelous, will not direct grantee under the rule in Shelley's case. (May vs. Lewis, 132 N. C., 115, cited, approved and distinguished).

Deeds and Conveyances, Interpretation, Context, Estates, "Living Heirs," Surplusage. In constituing the meaning of words

ontained in a deed the court may examine the context of the deed, and for the purpose of shedding light upon the value or extent of the estate described in the conveyance clause, in this case "to P. for life and at his death to the surviving heirs." the warranty and covenant clause may be resorted to, when the language is applicable. as some evidence

that the word "living." thus used, should be treated as surplusage.

Action tried before Neal, J. upon de murrer to complaint, at November term, 1908, of Wake. Demurrer sustained; plaintiff appealed. The pertinent facts are stated in the opinion.

State vs. Ephriam Moody.

Procedure, Criminal, Demurrer to Evidence.

Demurring to the evidence is now regulated by statute, is peculiar to civil as tions, has no place in criminal proceedngs and tends only to delay.

Procedure, Criminal, Demurrer to Evidence, "Demurrer" Defined, State's Appeal.

In determining the right of the State to appeal in a criminal action upon demurrer, the word demurrer must be taken in its usual and ordinary significance as relating to a pleading and as under stood and defined in criminal proceedings. The State may not appeal when the trial judge sustains defendant's de-

murrer to the State's evidence. one, who did not reply, to become his 3. Same, Questions for Jury, Verdict Directing.

The jury must pass upon the weight of the State's evidence in criminal cases. Instead of demurring to the evidence, the proper practice is for the defendant to move the court to direct the jury that the evidence is insufficient to convict, and to enter a verdict of not guilty. If the trial judge so directs the verdict the State cannot appeal.

Procedure, Criminal, Demurrer to Evidence, Sustained, Mistrial,

In this criminal action the trial judge ustained the prisoner's demurrer to the State's evidence, the State appealed and no verdict was rendered. Held: The case the indictment, as upon a mistrial.

Mrs. C. J. Quantz vs. City of Concord. and

A city is liable to the owner for taking his land in widening its streets in the full Mental Capacity, Book of Settlements, amount of the damages, reduced by the value of the benefits conferred by the improvements; and the owner may sue testimony of both sides showed that the and recover therefor, in contradiction to testator had been confined in and dis-those laid in tort, where recovery may charged from a State's hospital about not be had unless the work was done in weive years previous to his death; and an unskillful manner. (The doctrine esthe conflicting evidence upon his mental tablished in Jones vs. Henderson, 147 N. capacity to make a will was directed al- C. 120. and that line of cases, distinguished by Walker, J.).

Action tried before Councill, J.,

The Pilgrim Grand

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