Western Carolinian.

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TERMS.

The terms of the Western Carolinian are $2 per annum—or $1 50, *if paid in advance.*

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Advertisements will be inserted at fifty cents per square for the first insertion, and twenty-five cents for each subsequent one.

All letters addressed to the Editor, must be *post-paid*, or they will not be attended to.

SUPREME COURT.

Cases decided in the Supreme Court of North Carolina, at its late term, accompanied with the points of law which they involve. We inserted a few of the cases in our last week's paper, and omit them, of course this week.

Lewis Leroy v. Marshall Dickenson, from Beaufort—in Equity. Decree for Complainant with cost to be paid by Defendant.

A judgment was confessed by Joel Dickenson to Defendant for a large sum, and kept on foot to cover the property of Joel from creditors—The complainant had also obtained a judgment *bona fide*, Joel D.—Held that the judgment by confession should be postponed to the judgment of Complainant, and injunction awarded accordingly.

Henderson and Burges v. Stuart, from Wake. Decree that the real estate be sold by the master.

Whether the purchase money remaining unpaid is a lien or not upon lands sold after a conveyance—It is certainly a lien where no conveyance has been made unless there is evidence that the land was looked to, or such lien has been abandoned. Held therefore, that where one Gasso purchased real estate and a conveyance was to be executed when the purchase money paid, the vendor had a lien upon the estate for the purchase money. And Gasso having mortgaged the premises to one Moore, and he, having paid the purchase money, held, therefore, that he might tack the money paid to the sum advanced upon the mortgage—for the payment was for Gasso's benefit, as it discharged the lein and enabled him to call for the legal title.

Under ordinary circumstances the purchaser from a mortgagee must stand in his place, and submit to a redemption upon the same terms, for though he may purchase for a large sum, and though he has the legal title, yet has not equal equity with the mortgager, for he buys with notice. For any thing which puts a party upon enquiry is notice.

There are cases however, in which a different rule prevails, as where the purchaser advances the money and takes a conveyance for the benefit of the mortgager or his heirs, and for his own benefit. But in this case, the defendant having taken an *absolute conveyance* from the mortgagee, and by his answer *denied* the plaintiff's *right to redeem*. Held, that he must stand as a mere assignee of the mortgagee, and must submit to a redemption on the same terms, and was not entitled to the sum actually advanced by him.

Arrenton v. Jordan, from Pasquotank, Judgment of the Superior Court reversed, and that of the County Court affirmed.

A sheriff may, but he is not *bound* to, insist upon 2 securities in a bail bond. If a bond be taken with one only, and that one *is sufficient*, the plaintiff may except. The bond, however, with one security is good, either on *scire facias*, or an action of debt.

An assignment of the bail bond is not required when the suit is in the County Court; the 17th section of the Court law (1777) being confined to the Superior Courts.

It is not necessary in a sci fa. against bail, to state the issuing and return of a ca. sa. against the principal: though the want of such ca. sa. would be a defence for the bail.

Fordham v. Miller, from Lenoir.—Bill dismissed at Complainant's cost.

A father by deed, gave a negro to his daughter, and provided that if she died without children, the slave should return to the family. The deed was put in the father's possession to be registered; and afterwards the daughter, *by parol*, renounced all claim under the deed, and exonerated her father from all obligation to have it registered, and authorised him to destroy it. She afterwards married and died. Her husband filed this bill to set up this conveyance.

Held, 1st. That after this voluntary renunciation, the daughter would not have been entitled to the aid of a Court of Equity to set up the conveyance.

2. That the husband succeeding to her rights, could claim nothing more than she could have claimed.

Quere. Independently of this objection if the Court would be justified in setting up this conveyance for the benefit of the *husband*, thus giving it a different operation from that which the parties intended?

Goodman v. Armistead, from Chowan. Judgment of the Court below affirmed.

The omission of the year of our Lord in the *teste* of a subpoena, the year of independence being mentioned, is immaterial. The latter date is sufficiently certain, without the former.

Peter McKellar v. A. F. Bowell, from Cumberland. Judgment affirmed.

The record of a recovery against a *Guardian* is not competent evidence against his *securities*, in an action brought by the Plaintiff on that recovery against the securities to subject them upon the guardian bond for the default of their principal.

The Governor v. Henrshan and others, from Beaufort. Judgment affirmed.

An action upon a sheriff's bond: plea—the statute barring actions on such bonds after six years—replication, a promise within three years. Held the replication is a departure from the declaration—*for* the promise, though it may make the party liable to an action founded upon it, does not restore the right of action *on the bond; for to that*, the lapse of time is, by the statute, a positive bar.

Den on dem. of Estem and Baxter v. Paine and Sawyer, from Pasquotank. Judgment affirmed.

"*What* are the termini or boundaries of a Grant or Deed is matter of law—*Where* these boundaries or termini are, is matter of fact. It is the province of the Court to declare the first, that of the Jury to ascertain the second." Where natural objects are called for, and course and distance given, the former are the termini, and the latter are mere pointers or guides to the former. Hence, when the natural object called for is unique, or has properties peculiar to itself, course and distance can have no effect—But, where there are several natural objects answering the description, course and distance may be adverted to, to ascertain which is the object designed—In which case they do not control a natural boundary, but merely serve to explain the latent ambiguity.

Wilson v. Myers, from Beaufort. Judgment affirmed.

A Petition was filed for an injury to land by a mill-pond, against several defendants—a trial was had and verdict taken for the plaintiff, and judgment against all the defendants. One of the defendants was then dead, and a writ of error was brought for this error in fact. On the return of the writ a motion was made in the Court below to amend, by entering a nolle prosequi as to the defendant who was dead, as of the term at which the trial was had. The motion was allowed on payment of costs, and the writ of error dismissed. On appeal to this Court—held, that the Court below were right in allowing the amendment, for it would have been at the trial *a matter of course*. The injury for which the action is brought is still a *tort*, though the act of Assembly has given a different remedy from that existing at common law.

Hackstall and wife v. Powel, from Bertie. Decree in the Court below reversed, and cause remanded for further proceedings.

The act giving power to Courts of Equity to order sales of real estate for the purpose of partition, directs the proceeds to which infants are entitled to be secured to such infant or his *real* representatives. Hence, such share of the proceeds is to be considered as real estate, and (if the infants die before arriving at age) the heir at law will succeed to it, and not the personal representative.—But if the infants arrive at full age and then die, whether the heir at law will be entitled, *quere?*

Ellison's Ex'rs v. Jas. Ellison, from Orange.

The Testator executed a paper writing in form of a Trust Deed, and on the same day made a Will referring to the former paper. The purpose of which was clearly a disposition of his estate after death. D. Y. was one of the Trustees and Ex'rs, and also one of the only two subscribing witnesses. The Trustees were directed to retain out of the funds which they should receive, a compensation for their trouble. The testator had both real and personal estate, all which his Trustees and Ex'rs were directed to sell.—After the death of Ellison, D. Y. released, &c. all his claim, &c.

The presiding Judge in the court below held, the two papers to make one will, and to be well executed to pass real estate. On appeal to this court, held by two judges, that the two papers are both testamentary, and make one disposition. One Judge contra. But held by all that the will is not well executed. That D. Y. the witness, had such an interest in the lands devised as was contemplated, by the act of 1784, and that when such interest exists at the time of subscribing, no subsequent release will avail.

Matlock v. Parks' Adm'rs, from Rockingham. Judgment affirmed.

The administraters of Parks recovered judgment against several—Execution put in the hands of plaintiff then Sheriff, levied on property and advertised for sale, then by agreement proceedings were suspended and the levy returned upon the *fi fa*. The deft's in the execution then paid the plaintiff in execution, (the present defendant) the writ out. This action was brought against the defendants as administrators, to recover the commissions. Held 1st. that *under* the act of 1784, the Sheriff is entitled to the commissions though no sales are made, the service required by the act being substantially performed; but held 2d. that the action cannot be against the defendants in their representative character. And held further, that the power of amendment given to this Court does not extend to amending the proceedings, so as to make them against the defendants in their own right, for the power extends only to such amendments as might have been made by the Court below after final judgment. But no *substantial* amendment, (it seems) should be allowed in this Court, for every such amendment should be accompanied with leave to defendant to vary his pleadings, and there are the new issues to be tried? This Court is strictly a Court of Equity; and such amendments presenting a new case and requiring new pleadings, should not be allowed here.

Brady v. Wilson, from Moore. Judgment affirmed.

To charge a man with burning an outhouse not parcel of the dwelling house, is not actionable.

Stamps v. Graves, from Caswl. Judgment reversed, and a new trial awarded.

A variance between the writ and declaration, the first being in debt, the latter in assumsit, is fatal even after verdict. A note not assignable within the statute cannot be declared on, the consideration must be set out and the note can be only evidence to the jury. Wher the contingency on which the payment is promised is of such a kind as show no benefit or injury to the parties, the note is of itself no evidence of a consideration, but proof must be given of it *aliter* the note.

Jarvis and others v. Wiatt and others, from Perquimons.

Devis to A. for life, and after his death to the heirs of his body lawfully begotten, to be equally divided among them and their heirs forever. The words heirs of the body are words of description and not of limitation.

Devereux v. Cape Fear Bank, from Wake.

This was an injunction bill, and the answer having come in, and being very long, there was not time to hear the bill answer in the Court below. By consent the case was transmitted to this Court. Held, that the Court has jurisdiction of the cause.

Stedman v. Riddick, from Gates Judgment affirmed.

A right to a slave adversely held by another, cannot be assigned so as to pass the legal title to the assignee. It is a mere chose in action, and is, at law, incapable of assignment.

State v. Alexander, from Wilkes. Judgment affirmed.

From the Raleigh Star.

METHODIST CONFERENCE.

The annual Virginia and North Carolina Conference of the Methodist Church convened at Portsmouth, Va. on the 15th, and adjourned on the 23d ultimo, Bishops M'Kendree and Soule presiding.

During the session, arrangements were made to establish a College, within the bounds of the Conference, for the instruction of youth in those branches of scientific learning usually taught in Universities, by the appointment of a committee to draft a constitution, and circulate proposals for the erection of suitable buildings, by subscriptions, to be solicited from those disposed to patronize the undertaking.

YADKIN DISTRICT.
P. Doub, P. E.

Granville, George W. Nolly, and John H. Watson.
Franklin, William H. Starr
Yadkin, William Holmes
Iredell, Jesse Lee
Salisbury, Christopher Thomas and Benjamin Edge.
Guilford, Thos. Mann, (supernumerary) and Jacob Hill.
Caswell, George Stephens
Hillsborough, Joshua Leigh
Banister, Rich'd D. Merriwether.

UNIVERSITY LANDS.

We have just learned from D. Graham, Secretary of State, (says the Murfreesboro' Ten. Courier,) that he has received official information of the assent of the Trustees of the University of North-Carolina, to the law passed by the General Assembly of this State, at its late session, on the subject of the University Land Warrants!

FOR THE WESTERN CAROLINIAN.

Mr. Printer: The Supreme Court has been too recently established in this state, for its utility to be clearly manifest. Some prejudices exist against it, which time alone can remove. But I cannot doubt its final triumph. Another question of great moment presents itself: which is, whether this Court is not capable of great improvement? For my part, I think it may be made more extensively useful. Many injuries arise to individuals from its present construction. In the Western counties, many questions of much importance to those concerned, have already been referred to this final Court; and from the nature of our laws, many other questions for its decision may be expected yearly to arise: But few of the attornies that practise in our courts, are willing to follow a suit to Raleigh; and of course, in a majority of cases, new attornies must be employed. It's not the expense of this arrangement that forms the greatest grievance; it is the subjecting of causes to counsel unacquainted with many of the points with which an attorney who travels with the suit from its commencement, is familiar. I submit, also, whether a new organization of this court, by which it should hold a session in the western part of the state, and another in the east, if required, would not enable it to exercise *Equity* jurisdiction to an extent nearly if not quite commensurate with our necessities in that respect? We cannot be ignorant, that in many of the large Western counties, the authority of the Superior Courts to hold Courts of Equity, is almost a nullity. A bill of injunction may be dissolved; but as to *hearing a case*, it would almost amount to a miracle! I had rather wait for a total Eclipse of the sun. Now I for one, am of opinion that it would not increase too much the burdens of our venerable Judges of the Supreme Court, if they should be authorized to extend their jurisdiction and their labours, in the way I have indicated. I hope, sir, you will tell them so, and thereby oblige many

A FARMER.

THE STATES.

Rhode Island—has no written constitution, and differs in this respect from all the states. She is governed by the Charter of Charles 2d, the provisions of which are so liberal, that little inconvenience has been hitherto experienced from the want of a constitution. All the executive officers are annually elected. From the year 1775, to the present year, a period of 50 years, she has had but 10 different Governors, one of whom was annually re-elected for sixteen years. The present House of Representatives consists of 72 members, of which six are new ones.

The population in 1755, was about 40,000; the present population is about 85,000, having little more than doubled in 70 years.

Vermont—The tract of country now called Vermont was settled at a much later period than any of the eastern states. The History of the disputes between this state and New Hampsire and New York, is one of considerable interest. The question was in relation to the claims of New York to the whole territory; which being referred to the English Crown, was decided in favour of New York, and the officers of Justice were ordered to enforce the claims. The settlers opposed the officers with violence, and every man's arm being nerved for resistance, they associated together in their towns in defence of each other. The militia of the neighbouring part of New York were called out to enforce the laws; but such was the resolute character of the inhabitants, that nothing effectual was done.

Foremost among the Vermonters, stood Ethan Allen, one of the most extraordinary characters of the age, a bold and determined man, without moral cultivation, but with great natural powers. Under his guidance and counsel they resolved to maintain what they conceived to be their rights, at the risk of being treated as outlaws. This state of things continued until the battle of Lexington—New York endeavoring to enfore its jurisdiction, and Vermont strenuously resisting it.

During the whole Revolutionary war, the people of Vermont, though contending in favor of the general cause, were placed, as regarded their civil government, in an embarrassing situation; and when the peace of 1783 took place, she was completely a sovereign and independent state. In 1789, after a dispute of 26 years, an amicable arrangement was effected; and in 1791, Vermont became one of 'the United States.'

Maryland—Maryland was so named in honor of Henrietta Maria, the wife of Charles I. It was the third colony planted in the country. The present Constitution was framed in 1776; but, though she engaged in the general cause, during the revolutionary war, in the support of freedom, with great zeal, she refused to ratify the articles of confederation until 1781; in that year, the delegates were instructed to ratify the articles, their fears of the preponderance of the larger states being removed, by the cession of their western lands to the common fund. The soil is well adapted to the culture of tobacco and wheat. Two articles are said to be peculiar to the state—the genuine *white* wheat, which grows in Kent, Queen Ann's and Talbot counties, and the bright *Eli's foot* tobacco, which is produced in some parts of the western shore south of Baltimore. Baltimore, in 1665, had a population of 300; in 1790, 13 503; in 1800, 26,514; in 1810, 47,555; and in 1820, 62,627.

Tennessee—In the year 1780, a small colony of about 40 families, under the direction of James Robertson, crossed the mountains, and passing through a wilderness of 300 miles, settled on Cumberland river; and founded the town of Nashville. In 1783, the Legislature of North-Carolina appointed commissioners to explore the western part of the State, and to report to the succeeding Legislature which part was most suitable for the bounty lands promised to the officers and soldiers of the continental line. Agreeing to their recommendation, the Legislature, in 1783, laid off a tract of land on the Cumberland river, for the discharge of the military bounties. This district included the infant colony at Nashville, a small tract having been allowed to each of the settlers. In 1795, the inhabitants of this district, feeling sensibly the inconvenience of a government so remote as that in the capital of North Carolina, endeavored to form an independent one, to which they intended to give the name of 'the State of Franklin;' but differing among themselves, the scheme was abandoned for a time. In 1789, the Legislature of North Carolina passed an act ceding the territory to the United States, on certain conditions. Congress accepted the cession, and provided for its government, by an act under the title of 'the Territory of the United States South of the Ohio.' On the 8th of June, 1791, the President appointed William Blount Governor of the territory, which office he held during the continuance of the territorial government. Six years afterwards, Tennessee was admitted as a sovereign State into the Union.

Louisiana—A large extent of country in this state is annually overflowed by the Mississippi. The whole extent of lands thus inundated is 8,340 square miles, and if to this be added 2 550 square miles for the inundated lands on Red river, the whole amount in the State will be 10,890 square miles. It must not be supposed that this extensive tract is one continued sheet of water. It is intersected by innumerable canals and lakes, which, interlocking in a thousand mazes, chequer the whole face of the country. The whole area actually submerged is about four thousand square miles.

The extensive prairie lands in the south-west part of the state, embracing the county of Opelousas, and the greater part of Attakapas, are most admirably adapted to the rearing of cattle, and have hitherto been used almost exclusively for that purpose. Many of the richer planters on the Theche and Vermillion, have stock farms established on Mermentau and Calcasu rivers, and count their cattle by the thousand.

NORFOLK, FEB. 17.

African Colony.—The ship Indian Chief, Captain Cochran, chartered by the American Colonization Society, sailed from this port on the 15th inst. for the Society's settlement at Cape Montserado, on the coast of Africa. She takes one hundred and fifty four free people of colour, with supplies for the Colony, the frames of five large buildings which the Government intend to provide for the accommodation of a number of captured Africans who will be sent out hereafter in another vessel; the frames of two long boats for the trade of the rivers, and other things. She takes out also Dr. Peaco, a surgeon of the navy, a gentleman of professional skill, who acts in the double character of an agent of the Government, and a physician to the people.

American Beacon.

An organized conspiracy among a number of negro boys of Norfolk, Va. to rob, plunder Stores, Dwellings, &c. has just been discovered. Their schemes were so adroitly concerted, by private signal, and other devices, as to throw store keepers and others off their guard while they bore off articles of Merchandise from the counters, doors, &c.