

# The Blackwell Durham Tobacco Company

## Judge Simonton Issues Order for Final Settlement of Receivership--Stockholders Get a Balance

The clerk of the Circuit Court in this city received from Judge Charles H. Simonton yesterday an order dismissing the receivership of the Blackwell Durham Tobacco Company. That is, it provides that Mr. Percival S. Hill, the receiver, shall be relieved of all liability in the proceeding when he shall have paid all the costs in the case and distributed among the stockholders of the company the remainder of the sum of \$23,225.41, he being directed to make this distribution pro rata. The full text of Judge Simonton's order will be of interest in this connection. It follows: In the United States Circuit Court, Eastern District of North Carolina, in the case of George A. Reynolds and others vs. Blackwell Durham Tobacco Company and others, in Equity.

This cause came on this day before me to be heard upon the record in the case, and especially upon the report of Percival S. Hill, receiver, dated November 12, 1901, in connection with his report heretofore made March 25, 1901, upon this and report.

It appears to the court that the said Percival S. Hill, in obedience to the order of the court made on March 25, 1901, has distributed among the stockholders of the Blackwell Durham Tobacco Company all the moneys and proceeds of all the property that have come into his hands, except \$50,000 which he has retained since said report and order to satisfy any outstanding claims against the Blackwell Durham Tobacco Com-

pany, and to pay any expenses necessarily incurred by him in his said receivership. It appears that the sum of \$23,225.41, as retained by him under the order of the court as aforesaid, the said Percival S. Hill, receiver, has expended in the proper settlement of claims and expenses of the administration the sum of \$23,774.59, leaving in his hands the sum of \$23,225.41 to be applied to the payment of the costs of the above entitled suit hereafter according, with the balance to be distributed pro rata among the holders of the shares of stock of Blackwell's Durham Tobacco Company, of which, as it appears to the court, there are outstanding 159,916.

Now it is considered and decreed by the court that the report of the said Percival S. Hill, as aforesaid, be and it is hereby approved in all respects, and that the said Percival S. Hill, receiver, aforesaid, out of said \$23,225.41 pay to the clerk of the United States Circuit Court at Raleigh, North Carolina, the costs in the above entitled suit hereafter according, and the balance be distributed pro rata among the stockholders of the said Blackwell's Durham Tobacco Company, as aforesaid. The said receiver may either pay direct to said holders of said stock their proper proportion of said sum, or he may pay to the clerk of the United States Circuit Court at Raleigh the amount due to any of such stockholders.

It is further considered and decreed that the said Percival S. Hill, upon making the payments herein indicated and directed, and upon his filing in the office of the said clerk of the United States Circuit Court at Raleigh of the receipt or receipts given him for their proportionate part of said sum by the stockholders to whom he makes direct payment, be discharged from further liability in any way arising from the said receivership.

CHARLES H. SIMONTON, Circuit Judge, November 15, 1901.

# North Carolina Society Sons of the Revolution

## All Old Officers Re-elected—Three New Members—Thanks to New York Society--Resolutions Adopted

The North Carolina Society of the Sons of the Revolution met Friday afternoon in the office of Col. Thomas S. Kenna and re-elected all the old officers, adopted several important resolutions and elected three new members. The officers re-elected are as follows: President—Dr. P. E. Hines. Vice-President—Col. Thomas S. Kenna. Secretary—Mr. Marshall DeLancy Hayward. Treasurer—Prof. D. H. Hill. Chaplain—Rev. Robert Brent Drane. Board of Managers—The officers named above, ex-officio, and Capt. A. A. Ashenbrenner, Mr. Graham Davis, New Bern; Mr. George B. Curtis, Enfield; Col. Julian S. Carr, Durham; Mr. Ste-

phen A. White, Mebane; Prof. Collier Colby, Chapel Hill; Mr. Heriot Clarkson, Charlotte; Mr. A. B. Andrews, Jr., Raleigh.

The society decided not to elect delegates to the convention of the general society which meets in Washington April 15 next, but they will be appointed by the board of managers later.

Three new members were elected during the meeting. They were Mr. Palmer Colby of Chapel Hill, Mr. Albert Hargrave of Chapel Hill, and Mr. J. B. Smith of Durham. A resolution was adopted thanking the New York society for a handsome silver loving cup presented to the North Carolina society some time ago.

The secretary was requested by resolution to publish such historical documents as may be deemed worthy of preservation and that they be published by the secretary later if the society deems it expedient.

The secretary was also directed to procure from Mr. James O. Carr, of Wilmington, a copy of the "Dickson Letters" recently published by him. The society rescinded its former action regarding the proposed amendment to the constitution on the basis of presentation in the general society, and the amendment was then formally adopted.

## DIGEST OF OPINIONS

### Supreme Court Decisions in Brief Form

(Reported by Jos. L. Seawell.)

J. R. Raynor vs. W. S. C. Railroad Co., appellant. (From Cumberland.) As drunkenness and soberness are liable to rapid and frequent fluctuations, evidence that a person was drunk at 4 o'clock in the afternoon is "missible to corroborate evidence that he was drunk at 11 o'clock in the forenoon of the same day."

A defence which can not be maintained by denial of allegations in the complaint must be set up as new matter in the answer. Where, in an action against a railroad company for wrongfully ejecting a passenger, the force used is material to the quantum of damages, it was proper to exclude the question whether unnecessary force was used in ejecting the plaintiff.

W. L. Parrish and Wife vs. P. C. Graham, receiver, et al., appellants. (From Durham.) Co-obligors—Judgment—Practice.

Under the Code practice, judgment rendered against several defendants may determine the ultimate rights of the parties as between themselves and, where, in an action upon a promissory note, one of the defendants, who was a co-obligor, tendered an issue which was raised by the pleadings as to whether he was supplemental surety, it was error to refuse to submit said issue and to render judgment against both defendants for the amount of the note.

Martin Jerman vs. J. W. Gullidge, appellant. (From Anson.) Practice—Appeal.

The appellee's motion in the Superior Court to dismiss an appeal from a Justice of the Peace, for failure of the Justice to make return to the appellate court within ten days as required by Section 875 of the Code, will not be allowed where it appears that the delay was due to the failure of appellee's counsel to prepare transcript with the Justice as agreed between counsel, and that appellee was guilty of no laches. T. H. Vanderford et al. vs. J. Q. Foreman et al., appellants. (From Rowan.) Tender Under Section 1773 of the Code.

Where, in an action by the purchaser of leased premises to recover possession thereof after expiration of the lease, the lessee tendered the purchaser, under section 1773 of the Code, an amount "as rent for the premises" since

the expiration of the lease, the purchaser of said tender merely concludes his demand as to the amount of rent due but does not tender the tenancy one year to year nor preclude the purchaser from prosecuting his action to recover possession.

J. S. Carr vs. J. W. Smith, appellant. (From Durham.) Evidence—Co-sureties—Counterclaim. Where a witness has been questioned concerning a matter collateral to the issue evidence can not be introduced to contradict his answer. The exception to the rule where the collateral matter tends to show the temper, disposition or bias of the witness, does not apply where the witness is a party to the action.

Where, upon the trial of an action to recover amount paid by plaintiff as co-surety with defendant, defendant set up a counterclaim for an amount paid to the plaintiff by third party in which amount defendant had an interest and plaintiff's reply admitted said payment but alleged that action had been brought against plaintiff for its recovery, but introduced no evidence in support thereof, it was error to refuse the instruction that if the jury believed all the evidence they should allow the defendant's counterclaim.

W. R. Clement et al., appellants vs. H. R. Ireland et al. (From Davie.) Judgment—Judicial Sales—Excusable Neglect. A final judgment obtained by mistake, inadvertence, surprise or excusable neglect may be set aside by motion in the cause within one year.

In the absence of consent of parties, it is contrary to the regular course of the courts to confirm a judicial sale at the same term at which the sale is made.

The purchaser at a judicial sale has no independent rights before sale is confirmed. The Judge was authorized to set aside judgment of confirmation upon the ground of irregularity, surprise and excusable neglect and his ruling is not reviewable, where it was found that the court had given notice that no civil cases would be tried at the term at which the sale was made and that the sale was made at the noon recess and immediately reported and confirmed; that the price bid was inadequate; that defendant was precluded from filing affidavits to oppose confirmation or securing an increased bid and has since deposited an amount ten per cent in excess of the bid and gave notice at the confirmation that he would move at the next term to set aside judgment of confirmation.

Carrie Jeffries, by next friend vs. S. A. L. Railroad Co., appellant. (From Franklin.) Harmless Error—Damages—Evidence—Duty of Engineer to Keep Proper Lookout. The admission of irrelevant testimony was treated as harmless error unless injurious to the party excepting. In an action against a railroad company to recover damages for disabling a child, it is competent to show what the child's labor later in life would have been worth to herself if she had not been injured. In such case the question proposed to the engineer in charge of the train, "After you saw the child was anything not done that could have been done to save the child" was properly ruled out (Starnor vs. Railroad) and was also objectionable for that the proof should be directed to the inquiry whether the injury might have been avoided if the engineer by keeping a proper lookout could have seen the child in time to avoid the accident. A railroad company is not relieved from its duty to keep a proper lookout from the engine, although it is shown that the engineer and fireman were prevented from performing that duty by attention to other duties. A "proper lookout" is not such lookout as the engineer may be incidentally able to give.

## Night Was Her Terror

"I would cough nearly all night long," writes Mrs. Chas. Applegate, of Alexandria, Ind., "and could hardly get any sleep. I had consulted the highest medical authorities, but all other medicines failed, three \$1.00 bottles of Dr. King's New Discovery wholly cured me. It's absolutely guaranteed to cure Coughs, Colds, La Grippe, Bronchitis and all Throat and Lung Troubles. Price 50c and \$1.00. Trial bottles 10c, at all drug stores."

## EXECUTIVE CLEMENCY EXTENDED

### Governor Pardons J. S. Crenshaw of Mecklenburg and Chas. B. Mehagan and Jno. P. Mallett of Edgecombe

Governor Aycock on yesterday granted three pardons, one to J. S. Crenshaw of Mecklenburg county, who was serving a six months sentence on the county roads for shooting and killing a watermelon thief, and the other two to Charles B. Mehagan and Jno. P. Mallett who were convicted in Edgecombe county of a conspiracy to defraud creditors.

The facts in the J. S. Crenshaw case were that numerous depositions had been committed on the farms of that neighborhood by lawless persons in stealing water melons and other fruit. Crenshaw went out in his patch one night taking his gun with him, to keep guard. He saw three persons enter the patch and was afraid to try to arrest them. He fired on the men and killed one while he was in the act of stealing a melon. Crenshaw was a respected member of the Presbyterian church in good standing and it was certified before the Governor that he did not intend to kill but only wanted to frighten the crowd out of his patch. This pardon was recommended by the prosecuting solicitor, the jurors who declared that the prisoner would not have been convicted had it not been understood that the Governor would pardon him, several hundred of the best citizens of Mecklenburg county, pastor of the church of which Crenshaw was a member, Senator Alexander, Chairman of the County Commissioners' Weddington and Mr. W. C. Dowd editor of the Charlotte News.

The pardon of Mehagan and Mallett in Edgecombe was asked for by all the justices of the peace in the county except Lree, the school committee, county board of education, county superintendent, nine grand jurors, all the petty jurors except one, who is now dead, 117 county officers, 750 good citizens, 55 ex-county officers, the sheriff, register of deeds, treasurer, coroner, senator and representatives. The two men were convicted of defrauding the Woodard estate of \$4,000 and sentenced for two years. The case has been fought through all the courts and they began their sentence about two months ago when the United States Supreme Court affirmed the lower court. These are the only two men ever convicted of the offence for which they were sentenced that of concealing goods to defraud creditors.

## Died at 108 Years of Age

One of the oldest, if not the oldest, women in Wake county, Emeline Long, colored, died at her home, 113 West Cabarrus street, Friday morning at the ripe old age of 108 years. She was born in 1793, and remembered all the way of 1812 and similar historic events which happened in the early century. She moved here from Granville county some time ago and had perfect sight and hearing up to the time of her death.

## Masonic

Hiram Lodge No. 40, A. F. and A. M., will meet in regular session on Monday evening, November 18 1901, at Masonic Hall at 7:30 o'clock. Members are requested to come prepared to pay their dues, as they are needed to defray the incidental expenses of the lodge. Brethren of sister lodges and visiting brethren are cordially invited to be present. W. W. PARISH, W. M. E. B. THOMAS, Secretary.

## Biological Club Meeting

The next meeting of the Raleigh Biological Club will be held at Peace Institute Monday, November 18, at 4:30 p. m. The program will consist of "Personal Observations," a talk by Dr. Stevens on "How to Teach Some of the Fundamental Facts of Bacteriology to Any Class Without Apparatus," and a paper by Miss Wade on "The Life of One of the most famous scientists. All are cordially invited.

## You Know What You Are Taking

When you take Groves' Tasteless Chill Tonic because the formula is plainly printed on every bottle showing that it is simply iron and quinine in a tasteless form. No cure, no pay; 50c.

# MR. BRUBAKER RETIRES FROM S. A. L.

## His Position, Chief Special Agent, Abolished--Was a Popular Official--Succeeded by Baldwin Bros.

Mr. B. F. Brubaker, who has been chief special agent for the Seaboard Air Line, with headquarters at Raleigh, for the past six years, retired from the service of the Seaboard yesterday, and leaves for Portsmouth Monday to turn over his job to the Baldwin Brothers who have been directing a similar service for the Norfolk and Western Railroad Company. Mr. Brubaker was to have been in Portsmouth last Thursday but was engaged in the prosecution of two men in Georgia charged with robbing a train and could not leave. The two men, by the way, were both convicted and given two years in the state prison.

The reason for Mr. Brubaker's retirement is that the office of chief special agent has been abolished on that road. In writing Mr. Brubaker of the change the general manager referred very pleasantly to the excellent service which he has rendered the road since he has been connected with the company. Mr. Brubaker's work has extended over the entire system and while he has been careful and vigilant in the discharge of the duties devolving upon him he has nevertheless shown the highest esteem and friendship of the employees high and low, and there is very general expressions of regret that he is to sever his connection with the system.

Mr. Brubaker was seen last night and he spoke very pleasantly regarding his relations with the Seaboard people—officials and employes—and expressed regret that he will soon have to leave Raleigh. Both he and his charming daughter have made many friends here who will regret very much for them to leave. It will probably be two weeks or more before they leave Raleigh finally. Mr. Brubaker can not say just yet what he will do. He has a proposition to take a similar position with a company in California and also another from Illinois. He was engaged in a special agent service for the Illinois Central before accepting the position with the Seaboard.

## FAYETTEVILLE

### Damage Suit Knocked Out--Contemplated Changes in the Market House

Correspondence of The Morning Post, Fayetteville, Nov. 16. In the Superior Court at Lillington, yesterday, Jones was posited in a case for damages brought against the Atlantic Coast Line on account of anguish of mind and loss of the services of his son. This was a kind of supplement to the suit brought against the railroad company by two lads, Jones and Warren, for false imprisonment, they having been arrested for stoning a train. The lower court gave them \$2,000 damages, which was reversed by the Supreme Court.

## HARRY BASSETT RYE WHISKEY

There was a mistrial in the case of Mr. Hines, who is suing for the possession of the land on which nearly all the town of Dunn is situated. It is in contemplation to make a sweeping change in the market house building of this city, by remodeling the lower part for fire department and police headquarters, transforming the city hall above into an historical museum and removing the unsightly butcher stalls to another location.

Part of the cargo received here yesterday by the steamer Hurl was 20,000 pounds of condensed milk from the Armfield Wholesale Grocery Co.—probably the largest number ever received in this city at one time. Eliza Cain made an unusual complaint before the authorities yesterday, accusing her neighbor, Ann McKethan, of poisoning her chickens by giving them salt and heads of matches in their food.

## SIR WALTER RALEIGH COMMITTEE TO MEET

The local members of the Sir Walter Raleigh Monumental Committee appointed by Gen. J. S. Carr recently are requested to meet at the mayor's office on Monday afternoon at 5 o'clock to make proper arrangements for the public meeting next Thursday night. The following are the local members: Hon. Walter Clark, Mr. R. B. Ramey, Mr. Charles E. Johnson, Mr. Sherwood Higgs, Mr. W. H. Williamson, R. T. Gray, Esq., Mr. Frank T. Ward, Mr. Thomas H. Briggs, T. B. Womack, Esq., Dr. Thomas E. Skinner, Mr. Fred A. Watson, R. H. Battle, Esq., Mr. J. G. Brown, Col. John Nichols, F. H. Busbee, Esq., E. C. Smith, Esq., Capt. S. A. Ashe, Mr. E. M. Barbee and Mr. N. B. Broughton.

## Joseph Hewes' Grave

To the Editor of The Post. I notice Mr. Stone's letter from Beaton in this (16th) morning's Post. The fact of Mr. Hewes' death and burial in Philadelphia is slight coincidence that his remains are now at Hayes, Mr. Hewes was a wealthy man and his neighbors and friends at Edenton, especially the Johnstons, were devoted to

him and his memory, and though there are few known instances of the removal of the remains of deceased persons such a distance at that period, there are some. Governor Abner Nash died in New York (not Philadelphia, as Mr. McRee states) while a delegate to the Continental Congress. He too was given a public funeral in which Congress itself, the heads of the departments and foreign ministers took part, and his remains were "interred," to use the expression of the "Annals of New York" in which the account of the funeral is to be found, in St. Paul's churchyard. He died Saturday, December 2, 1788, and was interred the next week; yet there can be no reasonable doubt that his remains now rest at Pembroke on the Trent river, if the tradition of his immediate family in and about New Bern are to be relied upon. Hermetically sealed lead coffins were used and the remains were conveyed by sea. FRANK NASII. Lillsboro, N. C., Nov. 16.

A little man recently walked into a dry goods store and said: "I do not know how to use the telephone. Will you please call up this number? Thank you." "Here is the number, What shall I say to the doctor?" "Tell him that his paralyzed patient is walking around this morning." "Yes." "That I think there is hope for his recovery. I cut off the hair and put fourteen fly blisters on him last night. I found that his appetite is fine, but he won't touch that raw meat. One of his ears fell off during the night, and I think he is blind in one eye, and I think there is no use in giving him medicine. It makes him howl. His tongue looks as if it had been put through a wringing machine. What does he want me to do?" "He says to let the patient alone until he gets downtown. By the way, Mr. Blank, I don't know your patient, but it must be a sad case."

"Yes," said the little man as if looking for sympathy. "I think that he was at one time the finest collic that ever cracked a bone."—New York Mail and Express.

"I am sorry I kept you waiting so long, Henry, dear," murmured the wife as she entered, ready for the theatre. "It took me so long to put on my coat." "Did you put on only one coat?" he asked, blandly. "She turned quickly and found his gaze resting on her cheeks."—Columbus Journal.

Misses Rosa and Carrie Broughton left yesterday for Durham, where they will attend the marriage of Miss Lougee and Mr. William R. Mabry on next Tuesday.

# PROCLAMATION TO WEAK MEN

Charity, the Noblest Impulse of Man, Exemplified by Well Known Missourian. SENT FREE TO ALL MEN!

W. S. Harter, an honored and influential citizen of Nevada, Mo., makes a statement and an overgenerous offer that comes in the shape of a proclamation to all men!



tion of health to all afflicted with loss of vitality and its kindred ailments. His case was a most pitiable one, nightly emissions so draining and his constitution was weakened to such a degree that it was impossible for him to perform his duties. He spent hundreds of dollars for remedies and to specialists, but could not regain his vitality or check the awful nightly emissions. One day a brother lodge member called his attention to a remedy, in fact, implored Mr. Harter to take the remedy for his affliction; he did so, and in one month's time was entirely cured, his constitution rejuvenated and his vitality regained. Today he is a man in every sense which that word would imply. Mr. Harter is not what one would call an immensely rich man, but his gratitude for this marvelous remedy is so great that he says he intends making his life's labor that of putting this remedy in the hands of all those afflicted as he was. Mr. Harter, being a very conscientious man, thought perhaps the remedy may not prove in every case so wonderfully beneficial as it did in his. For this reason he gave fifty sufferers the treatment, and in every instance the same wonderful results were experienced as was in his case, so he now says he will send every sufferer of this death-dealing disease, Lost Manhood and its kindred ailments, absolutely free, the means which directed him to health and contentment. At Nevada, Mo., there is located State Asylum, No. 3, in which there are at present about 700 patients; Mr. Harter claims that upon good authority he is informed that about 75 per cent of these unfortunate lost their minds through Lost Manhood, and the awful drainage brought upon them, through nightly emissions. With this awful picture ever before him, he believes it is his duty to humanity to save those now upon a brink of destruction, which is much worse than death. Any reader sending his name and address to Mr. W. S. Harter, 702 Ash street, Nevada, Mo., will receive without delay, and free of charge, this wonderful knowledge.

# Items of Interest

To Close Buyers. The balance of the Dry Goods stock is going rapidly. Bargains never offered before are here. We are out of the dry goods business entirely. Exclusively in the Furniture and Housefurnishing business now.

We have some very desirable goods in Dry Goods, Notions and Millinery left over. We want to make a clean sweep quick; that's why we are cutting prices so recklessly. What's here won't last long—the ladies are coming thicker every day. Quicker you come the better saving you'll make and the better we'll be pleased. No hold up; we are in earnest; we want the room; we don't want the goods; price is no object; our line is FURNITURE; we have no room or time to handle dry goods. Come and see what we offer.

JOHN T. QUARLES, Sole Agt., Yarboro House Saloon, RALEIGH, N. C. W. E. JONES FURNITURE COMPANY, 214 S. Wilmington Street.

# CROSS & LINEHAN CLOTHING, OVERCOATS, FURNISHINGS

Cur stok is again filled with the up-to-date goods in the line of CLOTHING, OVERCOATS, FURNISHINGS. We have had to trouble to get just what we wanted and what we felt sure would please you. We are proud to say that our efforts have been successful and we are prepared to show you up-to date goods in each department. This means a good deal, for we show you NOT what was worn YESTERDAY, but what is being worn by the best dressed people in the fashionable centers Today

CROSS & LINEHAN, Up-to-Date Clothiers and Furnishers