DIGEST OF SUPREME COURT DECISIONS

(Reported by Jos. L. Seawell.)

Report of decisions at August term, 1902, concluded.

BLOUNT vs. S. A. L. RAILWAY, from Wayne. New trial.

Upon petition to rehear this case it is held that where a self-coupler was defective but was restored to usefulness by the brakeman opening the "lip" of the coupler with his hand, and just as the cars were coming together, the brakeman, to place the bumper on the approaching car in the center, kicked it with his foot and his foot was caught and injured, the injury was due to contributory negligence and not to the defective coupler.

SMITH, petitioner vs. A. C. RAILWAY, from Mecklenburg. Petition to rehear dismissed.

Former decision (130 N. C., 344) is explained to the effect that where an employee of a railway company while engaged in painting switch targets in the company's yard and working within three feet of the rails, was struck by a switch engine, the engineer had the right to assume that the employe was in possession of all his faculties and that, not being hampered by obstructions, he would see the engine in time and step out of danger.

LOVE, appellant, vs. ATKINSON, et al, from Jackson. No error.

A contract for the sale of land, signed only by the vendor, is void under the statute of frauds, as to the vendee, although the vendee has partly performed his verbal promise to pay the purchase money and has entered into possession.

Rice vs. Carter, 38 N. C., 298; Dunn vs. Moore, 38 N. C., 364; Laythroop vs. Bryant, 2 Bing. N. C., 744; Simms vs. Killiam, 34 N. C., 252; Mizell vs. Burnett, 49 N. C., 249; Wade vs. New Bern, 77 N. C., 166; Barnes vs. Teague, 54 N. C., 277; Luton vs. Badham, 129 N. C., 96; cited and commented on.

WATKINS vs. KAOLIN M'F'G. Co., appellant, from Jackson. Affirmed.

The woner of premises in fee, subject to a deed of trust thereon to secure a debt, and in possession thereof, may maintain an action for damages, to the freehold.

Under the present system, pleadings must be liberally construed with a view to substantial justice between the parties and a variance between allegation and proof which doesn ot appear to have been misleading will be deemed immaterial.

An action will lie to recover damages for physical injury resulting from fright or nervous shocks caused by negligent acts; but as a condition precedent to recover in such case, it must appear that defendant knew, or ought to have known of plaintiff's perilous position.

Where it appeared that defendant's srvants knowing that the plaintiff (a woman) was exposed to danger, acted with indifference as to her safety, and disregarded her request to direct their blasting so as not to throw rocks upon her house, but threw several wagon loads of rock and small stones in her yard and garden and through her house, and plaintiff testified that she was rendered almost helpless from fright and nervousness and was seriously injured physically, it was held that an action will lie.

RAVENEL, appellant vs. INGRAM, from Macon. Affirmed.

No right of action accrues upon a covenant or warranty until there is either an ouster or a disturbance of possession equivalent to an ouster.

A judgment of court alone cannot constitutte a breach of warranty.

Where complaint in an action for breach of warranty is defective in its allegation as to ouster, but alleges that plaintiff has "been disturbed and deprived of his possession," such allegation, in the absence of demurrer, will be treated as a defective statement of a good cause of action.

A grantee without warranty may maintain an action against his grantor who held with warranty (Markland vs. Crump, 18 N. C., 94) but where complaint in an action for breach of warranty shows a special warranty to the grantor of the grantee who held without warranty, warranting such grantor against the claims of all persons claiming "through or under" the grantor of the plaintiff's grontor and the complaint failed to allege that plaintiff has been disturbed or ousted by parties claiming under the warranting grantor, it is held that the complaint is fatally defective.

A warranty constituting a covenant real and running with the land, cannot be assigned without assigning the land.

Where a warranted grantee enters into a contract agreeing that if a suit brought against him to recover the land is decided against him he will grant and assign to S. P. R. his right to sue upon his covenant of warranty, which was a covenant real, provided that S. P. R. "will pay over (to me) the surplus recovered" in a suit upon said warranty "after repaying himself the amount he shall have expended in defense of said suit," etc., it was held, that said contract constituted a champertous transaction and was void.

HARRIS v. QUARRY CO., appellant. From Henderson. New trial.

The court cannot take notice of any proof unless there is a corresponding allegation in the complaint.

The complaint alleged that defendant company required plaintiff to work under a superintendent; that it was defendant's duty, under its conract to furnish a superintendent to protect its employees against dangers incident to the business of blasting rocks; that on the occasion of plaintiff's injury the defendant's superintendent informed plaintiff that a hole which had been drilled and loaded and attempted to be fired had exploded and that he could redrill it without danger and ordered him to do so; that relying upon the skill and knowledge of the superintendent the plaintiff obeyed the order and while doing so the drill exploded and plaintiff was injured and that the injury occurred from the negligence of defendant in failing to furnish a man possessed of knowledge and ability sufficient to protect plaintiff from injury. Over objection of defendant, evidence was introduced to show that the superintendent was a vice principal with authority to employ and discharge hands but this evidence did not show that the vice principal was inexperienced and unskilled; Held, incompetent.

The evidence was that two holes had been drilled, varying in depth from 6 to 12 feet, that they were charged with powder and at the word "fire" the battery was applied and an explosion occurred; that the superintendent and two employees were at first undecided whether an explosion had occurred in one of the holes, but the employees concluded that both had exploded and the superintendent told them to proceed to remove the dirt from the hole if they thought it had exploded and while obeying this order the explosion occurred and plaintiff—a third employee—was injured;

Held that the defendant's motion to non-suit should have been allowed.

DARGAN, appellant v. C. C. RAILROAD CO. From Union. No error.

Action of ejectment. It was admitted by plaintiff that the garden (the subject of this suit) was used for railroad purposes and was necessary for conducting its business under its charter—being within 100 feet from the center of its track. The land was not used as a garden or burying ground when the railroad was finished; Held, that the usem ade of the land by plaintiff, subsequent to the completion of the road, was subject to the after necessity of the use of the whole of the 100 feet whenever it became apparent that the company needed it for the purpose granted in its charter. Sturgon v. R. Co., 120 N. C. 225; Shields v. R. Co., 129 N. C. 1.

Plaintiff was not entitled to compensation as under condemnation proceedings in the prerent action, the cause of action here being in the nature of ejectment. The redress, if any must be sought under the provisions of the statute. McIntyre v. R. Co., 67 N. C. 278; Land v. R. Co., 107 N. C. 72.

Under the acts chartering defendant company, married women are not affected until two years after the removal of their disabilities, but in this case when the road was completed, the land was the property of the husband of the feme plaintiff and his right was barred after two years from the completion of the road. His conveyance to his wife yas long after the road was finished.

FARTHING, appellant v. ROCHELLE. From Durham. Affirmed.

Action for specific performance of a contract for sale of land. The contract was based on a correspondence between the parties in which an offer wa smade to pay a certain sum for the premises described as "your lot;" Held that the description is not sufficient. Carson v. Ray, 52 N. C. 602, cited and commented on. The court say that the Act of 1891 Ch. 465 did not intend to do away with the necessity of all description but simply such particularly of description as would frequently be beyond the imediate reach of the ordinary vendor. Evidence of former negotiations in this case not connected with the present transaction is not admissible to locate the land.

DEBNAM v. CHITTY, appellant. From Hertford. Modified and affirmed.

Section 14 of article 2of the Constitution of North Carolina provides that "No law shall be passed to raise money on the credit of the state or pledge the faith of the state, directly or indirectly, for the payment of any debt.....or to allow the counties, cities ortowns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings.....on three different days and agreed to by each House respectively, and unless the yeas and nays o nthe second and third readings of the bill shall have been entered on the Journal."

In this action to declare invalid bonds issued by Murfreesboro township in Hertford county, the entry on the Journal of then House in reference to the passageof the bill authorizing the bonds, was "ayes, 94; nays ——. Total ——" and a printed list of the members and a dash after 94 names.

Held that the bill was not passed in accordance with the constitutional requirement, which is mandatory, and that the bonds are invalid.

NEGRO EDUCATION IN NORTH CAROLINA

To the Editor of the Kinston Free Press.

Dear Sir:—Your editorial of recent issue, bearing date of January 6th inst., dealing upon "The Educational Problem," has attracted no little attention. Pardon the liberty, when I say, that while yiu admit progeny along the lines of our State educational system, you imply a doubt of its fullest development, owing to apparent complications "by the race question." Is this assertion based upon any unconstitutional reason of that which would favor one race more than another, and yet require the deprived to pay school taxes? To do this would be a discrimination, and would be to a greater extent and complicate the situation, and render matters worse, thus producing serious results. Governor Aycock, in his recent message to the General Assembly, used these words: "The strength of our present amendment lies in the fact that after 1908 it provides an educational qualification . . . to educate al her children. If it should appear to the courts that in connection with our disfranchisement of the negro, we had taken pains for providing to keep him in ignorance, both amendments would fall together. . . . . It would wrong both races, it would bring our State into condemnation of a just public opinion, and would mark us as a people who have turned backward."

We were surprised on reading the following:

"We are spending money liberally for education for both white and black. The qustion for us to decide is this: Are we getting full value for the money expended? In many important respects the question may be answered i nthe affirmative. But, especially in the case of the negro, it is a serious question whether or not the education offered him approaches near enough to the Booker Washington idea of industrial training."

In the above it apears that you are in doubt as to whether the negro education comes up to Booker Washington idea. Why so? If not, is there not a cause? Tuckegee is controlled and managed by and after Booker Washington idea—as an individual. North Carolina is governed and controlled by the people. Tuskegee has been in operation for more than fifteen years, as compared with North Carolina system of educating the masses. If for any given length of time this "idea" has been fostered in North Carolina—has that "idea" been conducted on the method and thorough system as Tuskegee, expecting the same results? Is it possible to expect or even suppose that a child of four years should accomplish as much as a youth of nineteen or more years; each trained under different masters and laboring under dissimular advantages? Never again has there been in the history of North Carolina a vigorous crusade; and I may say, successful campaign in favor of the education of both white and black; as has been made under the administration of our present Governor Aycock, and State Superintendent of Education. To expect greater results from the State, in proportion to the moneys expended, and as compared with Tuskegee, is to say that the negro ought to be the peer o fthe white man—all things being equal, though the latter has had nearly 3,000 years of civilized training and advanced enlightenment, as compared with the negro's 40 years probation. But admitting this, the negro's showing will compare as favorable in his short space for the same given length of time. When he was emanicpated, 2,000,500 of that race, out of 4,000,000 were unable to read. Now, since we number 10,000,000, out of that number we have 6,500,000 that can read and write. He has reduced his illiteracy to 45 per cent in 35 years'. We number 40,000 that are attending the higher institutions of learning; 20,000 learning trades; 1,200 in classical courses; 2,200 in scientific and business courses; of graduates, 17,000; books written, 400; attorneys-at-law, 35; doctors, 450; value libraries, $500,000; school property, $12,0000,000; of church property, $37,000,000; farms, numbering 130,000, are valued at $400,000,000; homes, 150,000, are valued at $325,000,000; and pays taxes annually to the amount of $365,000,000. All this has been accomplished since his emancipation. Has the negro come up to the expectation of his friends, and to the "idea" of educational progress? All must admit that he has ran well; and his friends should not be ashamed of this portion of his record; and if he has any enemies, they too must admit that he has "fought a good fight," and won for himself and for his Southern home a record of which he needeth not be ashamed.

But the most surprising statement in said editorial is that.

"The negro's salvation lies in such training as will make better agriculturalists, better mechanics, and better domestic employes. His whole environment indicates this need. For various reasons he will never be allowed, in thsi southland of ours, to compete with the white citizen for social and political position. Let us fit both white and blac for the respective positions they will be called upon to fill in the civilization into which they are born."

Can the foregoing be sustained by the history of races and nations? Is it a fact that the salvation of any one race is wholly dependent on the lines mapped out? If so, what kind of citizens would they be, and what especial benefit would the government derived from such, if such made up the body politic? Is the labor of the land al o flife to live—is this the only education that is to be imparted? No; and echo answers, No! Upon this question of educational discrimination, the State Constitutional Convention of 1875 added the following clause to its educational provision:

"The children of the white race, and the children of the colored race shall be taught in separate schools; but there shal be no discribination in favor of, or to the prefiudice of either race."

That is to say, that both races shall, and be educated alike, and no discrimination of educational advantages shall be tolerated—one kind of education for the white, and another kind for the black. This applies to the common and State Normal Schools.

In thelast General Assembly the following remarkable expression appears in the message of Governor Aycock, to that body:

"You will not have aught to fear when you make ample provision for the education of the whole people. Rich and poor alike are bound by promise and necessity to approve your utmost efforts in this direction. . . . towards the education of the masses."

To give a race only a hand education would be to reduce it to a beast of burden. To deprive it of a mental and intelectual training, is to put such a race on a level with the brute; an to rob it of religious and Christian education, is to transform it into a black and malignant devil. This is the logical sequence of what would become of the negro, were he to be only educated as the above excerpt outlines. Such a state of affairs would cause men to lose reason and fly to brutish haunts. It would degrade our American civilization, especially in these southlands, and anon be classed with all other semi-barbaric races, and become only so great as pigmies are.

Whatever the environments of the negroes are, they have come to him uninvited, for men are not moulders of environments as they are of public sentiment, but are wholly influenced by them, and by an overruling cause of social, civic, moral and sumptuary laws. These environments, from whatever source, stands out either for weal of woe in every race civilization. To improve that race condition, is to do one of two things: either remove the race, by exportation, or improve his environments; by removing barriers and hindrances which lieth in his path of civic, moral, monetary, industrial, secular and religious advancement. This one began, and with proper and wholesome laws, executed with conservative firmness, and to all people alike, the negro's future in these southlands will be one of marvelous relation, making the south bloom and blossom as the rose.

It is harsh to say, and quite an injustice to the race, that the negro's present environment demands nothing more than a common laborer's position. This places him into the scales of racial noncullity, if it could be rationally done. His past history of 36 years stands out in stubborn rebuke against such a measure, as compared with other races who were, and are now, under similar environments.

Where is the sage, the logician or the philosopher that can, or has ever defined or fixed the relative status of any race? Yet, the editorial implies that the negro was born to fill a menial's place in civilization, especially in the south. Why not in the other portions of the the world? If such be a fact, I ask, why are those places or menial service monnopolized by other races in the north, east, west; and in some places of the south, and oftimes driven off, if not killed, because of their adaptation to menial service and services sought?

I am of the opinion that it would be for the good of the whole people in this country if the race question would be allowed to rest. I see no good reason for its periodic agitation, and we pray our friends not to say of do aught that would re-open the wounds of a helpless and oppressed people. We are here, and here to stay, live and die among our friends, and in the land which gave us birth. If we are dispitefully used, where are our hopes for the future, and what legacy could we leave for our children and children's children?

It is not our purpose to compete for social or political desstruction, but it is our full and settled determination to make our lives sublime—to succeed and ever come up to the expectation of our friends, the wide world o'er I voice the sentiment of every soul, intelligent and respectable negro, that nothing short of success is his desire in morals, industry, religion and education in all of its broad cast aspect and upon these God's blessings are asked, with the kind assistance of our friends.

DR. C. O. THOMAS.

Kinston, N. C., Jan. 15.

"I see that a blizzard wrecked a western State House just after the legislators had adjourned for the day." "I wonder what delayed it?"—Cleveland Plan Dealer.