



AND

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Ours are the plans of fair & delightful Peace, Unwarped by party rage, to live like Brothers.

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Law Register.

DECISIONS

SUPREME COURT OF N. CAROLINA.

The Editors of the Register, believing that a publication at the close of each Term of the Supreme Court, of the decisions which take place, will prove interesting, not only to the Parties concerned in the Suits, but to many others, have determined upon procuring from the Clerk of the Court at each term, a correct list of such Decisions, and of making such Publication. The following are the Cases decided at the late Term:

Robert Tear vs. John D. White's Administrator, from Bertie—Plaintiff may amend his Scire Facias on payment of costs. Hanal & Hanal vs. Everett's Executor, from Bertie—New trial refused. Wm Williams vs. Josiah Collins, from Bertie—New trial granted. Den on demise of Fenelope Clinton and others, vs. Enoch Hening, from Cumberland—New trial refused. Den on demise of Penelope Clinton and others vs. Owen Holmes, from Cumberland—Rule for a new trial refused. Charles Mallory vs. Phil. Hodges, &c. from Cumberland—No Attorney's fee is to be taxed on motion to the court to award execution; that the Sheriff is entitled to only one set of commissions, and the Clerk is entitled to such fees as allowed for like labor in other cases. Wm M'Gimpsey vs. Abner Nash Vail, from Chowan—The securities for the appeal are not discharged from their liability to the Plaintiff, and that they take nothing by their motion to have the Plaintiff's execution against them set aside. Den on demise of Evans vs. Thomas Saterfield, from Chowan—Judgment should be rendered for the Defendant. Searey's Executors vs. Littlejohn & Bond, from Chowan—New trial refused. Nathan Creevy vs. Edward Hall and others, from Chowan—The Plaintiff cannot recover of Defendants in this case. Martin Collins vs. John Graham, from Lincoln—The Plaintiff is at liberty to shew that the security which he has given is good. James Cathey vs. Woody Ford, from Lincoln—A new trial granted. Carleton vs. Bloodworth, from Duplin—The verdict in this case to be set aside and a non-suit entered. Hening vs. Daniel Glisson, from Duplin—The words charged in the Plaintiff's declaration, viz. "She is a whore," are not actionable in themselves, that the verdict in this case be set aside. George Gibbs vs. John Foote, from New-Hanover—New trial refused. The Governor vs. Henry B Howard, from New-Hanover—The demurrer over ruled, and the plea since the last continuance sustained. Trustee of Sampson County vs. the late Sheriff of said county—The Plaintiff may proceed in summary way to recover the monies claimed. Bartlett Tyler vs. the Administrators of Thomas Persons, dec'd, from Warren—New security to be given by the Plaintiff to prosecute his suit, or the suit be dismissed. Richard Russell vs. Presley Hinton, from Warren—The Defendant who is summoned as a Garnishee shall be discharged. Henry G. Williams, chairman, &c. vs. John Pitts, sen. from Warren—New trial refused, and judgment entered for the Plaintiff upon the point submitted. Hauser & Berman vs. Black & Mann, from Stokes—Demurrer of the Defendant overruled, and leave given to him to answer. Charles Bagge and others vs. the Assessors in Stokes County—The lots of land, &c. described do not constitute a town within the meaning of the act of 1808, and are therefore not liable to be taxed as town property. Jesse Cartwright vs. Jesse Godfrey, from Camden—answer of the Defendant cannot be read in evidence on the trial of the issues of fact—New trial refused. Den on demise of Lindsay vs. John Benford, from Camden—Judgment on this special verdict for the Defendant. Eliza Whitehurst's Heirs vs. Enoch Pritchard's Executors, from Camden—Distribution to be made per capita that the residuary legatees are entitled each to an equal share of the property contained in the residuary clause of Enoch Pritchard's will. The Governor, to the use of Partridge's Administrator vs. Folson and others from Moore—Nonsuit was regularly entered. Isaac Williams vs. Henry Branson, from Moore—New trial granted. Betsey Macy and others vs. Wm. Macy, from Rowan—Circumstances in special verdict not sufficient to imply a revocation. Wm Taylor vs. Alexander Burge from Rowan—New trial granted. Henry Verrel vs. John Trexler, from Rowan—Affidavit submitted sufficient for a continuance to procure additional affidavits. Den on demise of Man and others vs. Thos. Pray and others, from Rowan—Judgment for the Plaintiff. Patrick Brown vs. Ephraim Frazier, &c. from Hertford—Verdict set aside, and nonsuit entered. Benjamin Roberts, Assignee of Eli Moore, vs. Joseph Jones, from Hertford. The set-off offered in evidence by the Defendant is disallowed—Judgment for the Plaintiff. John Driver's Ex'rs vs. Jas. H. Keys, from Hertford—Arrest of Judgment overruled. Alexander Clark vs. Noah Wells, &c. from Burke—Costs on Demurrers are discretionary with the presiding Judge. The Governor, to the use of Benj. O'Kelly, vs. Jas. Hawkins, &c. from Burke—The Plaintiff is entitled to recover. The State vs. Jas. English, from Burke—The Solicitor for the State may endorse the Governor as Prosecutor at his discretion.

Samuel Wellborne vs. the administrators of N. Gordon, dec. from Burke—The administrators entitled to their costs immediately, and not bound to wait for judgment against the heirs at law upon a Scire Facias. James and William Henderson vs. Origin D. Dwight, Assignee of Michael Moore, a bankrupt, from Burke—The writ of error in this case should be dismissed, and judgment entered for the Defendant. Henry Hunter vs. Simon Whitehurst, &c. from Halifax—Injunctions dissolved. J. Hamilton vs. A. Jones's Executors, from Halifax—This suit has not abated. Wm Muir's Executors vs. John Stewart's Representatives, from Halifax—The Court of Equity can appoint a Guardian. J. Alston and wife vs. Bruch & Arrington, from Halifax—Demurrer sustained. Henry Warren vs. Alsey High, from Wake—Plaintiff to pay costs of suit. Caswell P. well vs. Sam'l Lyles, from Wake—Judgment for the Defendant. Tho's Barnard vs. Willoughby White, from Currituck—The act of Assembly regulating proceedings on warrants does not require the day or place of trial to be mentioned in the warrant. Jas. Bray's Orphans vs. Wm. Brumsy, former Guardian, from Currituck—That the choice of a Guardian by Orphans in court does not necessarily destroy the authority of the first Guardian, especially without notice and evidence of his abusing his trust; but the county court may remove a Guardian, on a proper case appearing before them. Wm. Ellis vs. Geo. Gee, from Chatham—New trial refused. Jas. Duncan and wife vs. Parish Self's Administrators, from Chatham—The Plaintiff is entitled to recover. The Clerk of Granville to the Court—The Clerk shall tax no Attorney's fee upon the motion to Court to award execution; that the Sheriff is not entitled to double commissions; and that the Clerk is entitled, on such motions, to such fees as the law allows him for like labour in other cases. Peau & Kittrell vs. Shadrach Parish, &c. from Granville—Mary Parish was regularly discharged under the solvent act, and that Defendants are not liable. Breese Lewis vs. John Thomas, from Granville—New trial refused. Cruicher vs. Walker, from Granville—Bill dismissed. The Wardens of the Poor vs. William M. Sneed, from Granville—The Defendant is not liable to pay the penalty sued for—Judgment for the Defendant. Jam's Child, Assignee, &c. vs. John Deveaux, from Orange—New trial granted. Anthony Ricketts vs. Dickens & Wait, from Orange. The action of covenant will lie upon the warranty set forth—Judgment for Plaintiff. Andre vs. G. bson vs. Jess. Lynch, from Guilford—The appeal dismissed. Wm. Lane vs. Mordecai Lane's Administrator from Guilford—The nonsuit was regular; the affidavit of the Justice ought not to be received to shew that the nonsuit was irregular—The evidence of the Plaintiff's debt may be withdrawn, but the other papers cannot. Den on demise of Terrill vs. Peter Mooney, from Rutherford—New trial refused. Jas. Miller vs. Lewis Hunter & others, from Rutherford—The debtor was regularly discharged, and the Defendants are not liable. John W. Homer's Administrator vs. John Darling, from Pasquotank—New trial refused. Wm. & P. M. Stocomb vs. Newby & Pleas, from Perquimans—New trial refused. The State vs. Jas. Patterson, &c. from Cabarrus—The Superior Court of Cabarrus has not jurisdiction of the offence charged to have been committed in another county. Penny Duck vs. Stephen Grace, from Franklin—Judgment for the Plaintiff on the points submitted. Christopher Dudley vs. Rob't Carmolt, from New-Hanover—The arrest of judgment overruled. Jas. Exam, Guardian, &c. vs. Hyder A. Davie and wife, &c. from Northampton—That Mrs. Davie, sister of Harwood Jones, inherited the lands in question equally with the said Harwood, and is entitled to a moiety of the rents and profits. Dan'l Smith vs. Obed Williams, from Onslow—The parole evidence offered by the Plaintiff is not admissible—Judgment for the Defendant. Den on demise of Dickenson and others vs. Jordan & Blount, from Pitt—On this special verdict, judgment entered for the Plaintiffs. Frederick Fonville vs. Solomon Gacey, from Craven—The Plaintiff is entitled to a recovery. The Executors of Robert Adam vs. Thomas J. Robison, from Duplin—New trial refused. A few other decisions were made in which the Judges had not filed their opinions. The Abbe Gregoire in his letter to Mr. Barlow, published in a late Register, mentions Vincent St. Paul. The friends of humanity will thank us for bringing them better acquainted with the character of this great and good man, as portrayed by the celebrated Abbe Maury.

Minister of a village, Chaplain-General of the galleys, Principal of a College, Chief of the missions and Joint-Commissioner of Ecclesiastical Benefices.—He instituted, in France, the Seminaries of the Lazarists, and of the Daughters of Charity, who devote themselves to the consolation of the unfortunate, and who scarcely ever change their condition, although their vows only bind them for a year. He endowed hospitals for foundlings, for orphans, for the insane, for galley-slaves, and for old men. His generous compassion reached all kinds of wretchedness, with which the human species is oppressed, and monuments of his beneficence are to be found throughout all the provinces of the kingdom.—When reading his life, we remark, that nothing does more honor to religion, than the history of institutions formed in favor of humanity, when humanity beholds them to the ministers of the altars. Whilst Kings, armed against each other, ravage the earth already laid waste by other scourges, Vincent de Paul, the son of a husbandman of Gascony, repaired the public calamities and distributed more than twenty millions of livres in Champagne, in Picardy, in Lorraine, in Artois, where the inhabitants of whole villages were dying through want, and were afterwards left in the fields without burial, until he undertook to defray the expences of interment. He discharged, for some time, an office of zeal and charity towards the galleys. He saw, one day, a wretched gally slave, who had been condemned to three years confinement for smuggling, and who appeared inconsolable on account of his wife and children having been left in the greatest distress.—Vincent de Paul sensibly affected with his situation, offered to put himself in his stead, & what doubtless will scarce be credited, the exchange was accepted. This virtuous man was chained among the crew of galley-slaves, and his feet continued to be swollen during the remainder of his life, from the weight of those honorable irons which he had borne. It is evident how much an action like this is capable of suggesting to the mind of an Orator; and that he would be unworthy of his profession, if he related it without shedding tears. When this man came to Paris, foundlings were sold in the street of St. Landry for twenty sous a piece; and the charge of these innocent creatures was committed, out of charity, as was reported, to diseased women, from whom they sucked corrupted milk. These infants whom Government abandoned to public compassion, almost all perished; and such as happened to escape so many dangers were introduced clandestinely into opulent families, in order to dispossess the legitimate heirs. This, for more than a century, was a never-failing source of litigation, the particulars of which are to be found in the compilation of our old lawyers.—Vincent de Paul at once provided funds for the maintenance of twelve of these children. His charity was soon extended to the relief of all those who were left exposed at the doors of the churches. But that unusual zeal, which always gives life to a new institution, having cooled, the resources entirely failed, and fresh outrages were renewed on humanity. VINCENT DE PAUL was not discouraged. He convoked an extraordinary assembly. He caused a number of those wretched infants to be placed in the church; and forthwith mounting the pulpit, he pronounced with his eyes bathed in tears, that discourse, which doth as much honour to his Piety as his Eloquence, and which I faithfully transcribe from the history of his life, drawn up by M. Abilly, Bishop of Rhodes. "COMPASSION and charity have assuredly induced you Ladies, to adopt those little creatures for your children. You have been their mothers by kindness, since their mothers by nature have forsaken them. See, now, whether ye also are willing to abandon them. Cease, for the present, to be their mothers, that ye may become their judges. Their life and their death are in your hands. I am going to put it to the vote, and to take the suffrages. It is time to pronounce their sentence, and to know if ye are unwilling to have compassion any longer upon them. They will live if ye continue to take a charitable care of them, and they will all die if ye abandon them." SIGNS were the only answer to this pathetic exhortation: and the same day,

in the same church, at that very time, the Foundling Hospital at Paris was founded and endowed with a revenue of 40 000 livres. This is the man, who scarcely possesses any fame in Europe! This is the man, who, according to the judgment of his enemies, had zeal only without talents! His life was interwoven with good works, the benefit of which we still enjoy. The misfortune of S. Vincent de Paul (if it be one to be little praised, and even little known,) was not to be celebrated, when he died in 1661, by that eloquent Bossuet who immortalized all his heroes, and who, at the very time was composing funeral orations for subjects far less deserving of his genius. But the honor of a public Panegyric is due to his virtues; and the Orator, who shall represent him in a point of view worthy of the admiration and gratitude of his fellow-citizens, will have deserved well of his country. LONDON PATRIOTIC MEETING. In a meeting of assembly of the Mayor, Aldermen and Liverymen of the several companies of the city of London, in Common Hall assembled, at the Guild-hall of the said city, on Monday the 21st day of May, 1810. 1. Resolved, That the rejection by the House of Commons of our late humble Address, Petition and remonstrance, appears to us a violation of our constitutional and indisputable right to state our complaints and grievances, and to call for relief and redress. 2. Resolved, That such rejection is an additional proof of the shameful inadequacy of the representation of the people in the Commons House of Parliament—and more forcibly demonstrates the necessity of a speedy and substantial reform in that honorable house. 3. Resolved, That we have viewed with mixed sentiments of indignation, concern, and pity, the address of certain persons, styling themselves "an ad-journed meeting of Liverymen, held at the London Tavern, the 4th of May," inasmuch as the statements contained in that address, imputing to the great body of their fellow-citizens in common hall legally assembled, motives and designs to "vilify and degrade the legislature," to "alienate the affections of the people from the government," to "produce contempt and distrust of the House of Commons," to "introduce anarchy," and to "subvert the constitution," are false assertions, originating with individuals who derive influence and emolument from the heavy burthen of the people. 4. Resolved, That among the names of those affixed to that address, appear the signatures of contractors, commissioners, and collectors of taxes, of placemen and placehunters; with a long list of their agents, and clerks of their dependants, emissaries or minions. 5. Resolved, That it is undeniable, that power, influence, threats and delusions, have been employed to prevail upon many to concur in the said address. 6. Resolved, That whilst we disclaim any imputation against the motives of several who, by gross misrepresentation, by arts of the basest kind, or by downright intimidation, have been compelled to lend their signatures to the said address, it is to us a source of high consolation that the address carries within it its own refutation, consisting only of allegations unsubstantiated, and of calumnies, which those who have propagated them must know to be groundless. 7. Resolved, That the said address appears to have for its real object the excitement of civil dissention, the increase of public abuses, and the further and fuller participation in the wages of corruption by many of those who have signed it, and who taking advantage of the present unhappy contest between arbitrary privileges and constitutional freedom, have endeavored to confuse and distract the public mind, for the support and continuance in place of a corrupt, weak, and wicked administration. 8. Resolved unanimously, That in the years 1679 and 1680, under the infamous government of Charles the Second, the city of London, and other parts of the country, petitioned the king for redress of grievances and the sitting of Parliament. That various counter petitions were

presented to his Majesty expressive of their abhorrence of the said petitioning, as tumultuous and seditious, and encroaching on the Royal prerogative. That on the 21st of October, 1680, the Parliament met, and its first act was to expel abhorrents, and to pass a vote, "That it is, and ever hath been, the undoubted right of the subject to petition the King for calling the parliaments, and redressing grievances; that to traduce such petitioning, as a violation of duty, and represent it to his Majesty as tumultuous and seditious, is to betray the liberty of the subject, and to contribute to the design of subverting the ancient legal constitution of the kingdom;" and they appointed a committee "to enquire after all those who had offended against those rights, and accordingly expelled several of its members, and petitioned his Majesty to remove others from places of trust." That on the 29th of Oct. 1680, the Commons voted—"That Sir F. Withers, by presenting to his Majesty an address, expressing an abhorrence to petition his Majesty for the calling and sitting of parliament, hath betrayed the undoubted rights of the subjects of England; and that the said Sir F. Withers be expelled the house for this high crime." That for the exercise of the undoubted right of petitioning, the City Charters were seized by a quo warranto, and it was argued for the city by sir George Freby, their Recorder—"That the constitution and the law of the land had given to the subject the right of petitioning, and of access to the Supreme Governor to represent to him their grievances, and to pray a redress to them; and that the same law gave them also a right to state in their petitions those facts and reasons which caused their grievances, provided those facts were true." And further, "That as there was one part of the constitution which gave the king the power to prorogue, so there was another part of the constitution that gave the subject an original right to petition for redress of grievances; and that, therefore, to punish a man for shewing in his petition those grievances which he desires to be redressed, and the causes of them, was the same thing as to deny him the right of petitioning; and that such denial would infer oppression and the most abject slavery; for when subjects are misused, and grieved, and are denied the liberty to complain, and pray the King to redress those grievances, or shall be punished for petitioning against them, they must necessarily be abject slaves." 9. Resolved. That these arguments having been over-ruled by venal judges, judgment was obtained against the city; the abhorrents for a time triumphed; the liberties of the people, with the right of petitioning, were subverted; and the succeeding monarch, in consequence thereof, driven from his throne and dominions. At the revolution in 1688, in the Bill of Rights, "the undoubted right of the subject to petition," was, among other things, "claimed, demanded, and insisted upon." This right has been of late again invaded, the people oppressed with unprecedented grievances & calamities, have been denied access to their sovereign, their petitions have been rejected by the House of Commons, and their grievances remain unheard and unredressed. The exploded doctrine of passive-obedience has been revived in all its extravagance, and a new race of abhorrents have sprung up, who, like the abhorrents in the days of Charles the 2nd, by the foulest calumnies, by vilifying and traducing the petitions of the people, are, (in the emphatic language of the then House of Commons), "betraying the liberties of the subject, and contributing to the design of subverting the ancient legal constitution of the kingdom."—That as the corrupt participators in public abuse, under the mask of loyalty, subverted the liberties of the kingdom, and involved James the Second in ruin, so the corrupt and unprincipled of the present day, under the same legal pretence, would involve the country and sovereign in similar difficulties, if suffered to persist. If therefore becomes the imperious duty of every real friend to the country to resist their mischievous designs, by recurring to the genuine principles of the constitution, and by using every legal means for obtaining a full, fair, and free representation of the people in parliament.