

TERMS OF THE NEWS AND HERALD.—The weekly edition, four dollars per annum, in advance; weekly edition, two dollars and fifty cents per annum, in advance. Liberal discount to clubs of five and upwards.

RATES OF ADVERTISING.—One dollar per inch for the first insertion, and fifty cents per inch for each subsequent insertion. These rates apply to all advertisements, of whatever nature, and are payable strictly in advance. Contracts for three, six or twelve months, made on very liberal terms. Transient local notices, fifteen cents per line for the first insertion and seven and one-half cents per line for each subsequent insertion. Obituaries and tributes of respect charged as advertisements, and should be paid for in advance.

All communications, of whatever nature, should be addressed to the Winnsboro Publishing Company, Winnsboro, S. C.

New Advertisements.—Mount Zion Graded School—R. Means Davis, Principal.

Attention is called to the advertisement of the Mount Zion School. The school is filled, and new pupils can be received only if there are vacancies.

OFF FOR BALTIMORE.—Mr. D. E. McMaster left on Monday for Baltimore, to attend the course of lectures at the Baltimore Medical College. We wish him success.

BEREAVEMENTS.—Mr. M. Y. Milling lost his infant child Emily, of diphtheria on Sunday night. Dr. L. D. Owens lost a child on Thursday. The cause of illness was not stated.

VISITING LAWYERS.—In addition to the local bar, the following-named gentlemen are in attendance upon the Court of Common Pleas this week: T. C. Gaston, Jr., J. Hemphill and A. G. Drice, Esqs., of Chester; Thos. S. Mooreman, Esq., of Newberry; J. T. Barron, Esq., of Columbia.

DEATH OF O. S. JONES, ESQ.—Mr. O. S. Jones died on Saturday after a painful and lingering illness, which he bore with great fortitude. A post mortem examination revealed cancer of the spleen. Mr. Jones was an old citizen of Fairfield, but spent a number of years in other States. We extend hearty sympathy to his family.

THE RAILROAD CASE.—Arguments before Judge Wallace—His Honor Reserves His Decision.

The case of F. Elder & Co. vs. The Charlotte, Columbia & Augusta Railroad Company was called in the Circuit Court on Saturday morning. The appeal from the judgment of the trial judge's court being only on questions of law, the case was tried by the Judge without a jury.

In the trial below, the trial justice was requested by the defendant's counsel to charge the jury as follows: "That the defendants have the legal right under their charter to classify goods, produce, merchandise and other articles offered them for transportation as 'heavy articles' or as 'articles of measurement,' according as said goods, produce, merchandise and other articles by their weight or bulk first exhaust the carrying capacity of the freight cars used for the transportation of the goods, produce, merchandise or other articles.

If we cannot fix an absolute rule in all cases will the shippers be proper parties to construe the statutes? Certainly not. Will the Railroad? Obviously not. Will the carrier? In this case it is the proper party, because the statute is so made that any improper distinction by the Road would inflict lessness of it. If it charges for a bulky article by weight it loses. But when the statute construes itself neither usage, nor parties ought to decide. A contemplation of the charter shows that the statute says a cubic foot of thirty pounds is a cubic foot. This is the key, this the line of demarcation or classification furnished by the statute itself. An article weighing less than thirty pounds to the cubic foot is to be estimated by bulk, one more than that by weight.

As to the cubic contents of the car, we say it contains 1290 cubic feet. The plaintiffs claim 1397 feet. Moreover, the car is loaded in the side instead of through the top, the real bulk capacity is 450 cubic feet. The weight capacity is 20,000 pounds, on which \$100 can be charged. 650 cubic feet at fifteen cents would allow \$97.50. The two charges are, therefore, nearly uniform.

In conclusion we hold that the true construction of the charter leads to the conclusion that the restriction is intended to prevent the railroad—1, when charging by weight from charging over fifty cents per hundred pounds; 2, when by measurement from charging over fifteen cents per cubic foot.

ARGUMENT OF H. A. GAILLARD, ESQ.—The counsel says that this Road is poor and is not a monopoly, and that these rules of construction do not apply. It is not necessary to refute this. There are no legal restrictions may exist to prevent it competing free, it is absolutely and in fact a monopoly, and of such a nature that under wrong management it has done, is doing, and if unchecked, will do incalculable injury to the people. Charles Francis Adams, of Massachusetts, has said: "To a modern community the unrestricted and reliable movement of trains upon its railroads is as essential to the even flow of blood through its arteries and veins as to an individual. Massachusetts, and especially eastern Massachusetts, has during the last forty years been built up in absolute reliance on that unrestricted movement. A very well developed earthquake, not of the first class, would hardly occasion more alarm, and would certainly occasion far less inconvenience, than this interruption of the people depend upon their daily movement just as much as they do on their daily bread, and indeed to be deprived of the former may well occasion the loss of the latter."

It is impossible to show fully the difference between good and bad management. But when it endeavors to lay a grievous and burdensome tariff upon the staple article, and virtually the only export of this country, the Railroad has aimed a fatal blow at the people whom it should assist. The claim of the Railroad to the right of classifying assumes the power of constraining the charter, and the sole right under this charter. And here let me suggest that the construction of the charter ought to be made in the light of the usage of the commercial world and of the carrying business that obtained at the time of its enactment. That it was commercial usage to carry cotton by weight is not denied. Indeed, in all the stages in which cotton is handled it is a article of weight. In Knox & Gill, although the point was made that cotton was an article of measurement, it was not considered. This at least shows that the South Carolina Road, operating under a similar charter, had always charged by weight. Possibly this was the mind of any one that construes anything but a heavy article. What are the facts in relation to this Road? A few months ago, for the first time in the history of the Road, notices were posted up that cotton should be estimated by measurement. For the first time in thirty-two years the Road suggested that it might add to its prospect by adopting a rule it had never thought of before.

But it is claimed that this usage was not uniform. There is no proof of this. We can prove the contrary by the testimony. [Counsel here quoted from testimony.] Again, are the rights of the community to be restricted and determined by the measure of the Road? To admit this is to give us the right to matter and beg the Road for clemency. If there is a right, we demand it. The defendant claims that cotton is a bulky article because the car cannot be loaded with it to its full weight capacity. Who gives the right to the Road to fit the charter to its cars? It must adapt its cars to the charter. All over the Union the Railroad adopt their cars to their carrying trade. They are of different shapes for coal, oil, iron, cattle, passengers, &c. On this very Road cars are made differently for different purposes. Why not construct the cars so that the cotton may be stored to the full capacity? Yet we are told cotton is a bulky article because it does not suit the cars which it suits the road to carry it in. And yet, how is the question to be decided? Neither of the parties can say. It is left to your Honor or to a jury of your countrymen. And here, let me say that we have tried the facts. You are here fortified by a sworn verdict of a jury on the fact that cotton is a bulky article, and must in this case be so construed. And, as to the *reductio ad absurdum*. The interpretation demanded by the defendant, if applied to such distance as Charles-on-even, would be ruin. Already has the Road crushed out way stations. These have no escape. They would be left in the power of the Road.

of repeated and hence matured legislative enactment.

Again, usage affords no rule of construction. The charge is made by weight because it is more easy and more in conformity with a practical uniform rule for all articles. All cars are marked "2,000 lbs." "22,000 lbs." &c. But while the Road estimates by weight, it has its different classifications in which bulk enters as a factor. Again, the usage in cotton, lumber and certain other articles is to have special rates, lumber by the foot, cotton by the bale, &c. Again, usage based on a misunderstanding of the law cannot be a safe criterion. It may have existed for years and then be discovered to be erroneous. Until the case of Knox & Gill vs. the South Carolina Railroad, 5 S. C., p. 22, the Railroads in this State understood the distance "one hundred miles" to be an indivisible unit, in which case the question whether cotton or any other article was charged by weight or by measurement was of no importance.

Usage based upon a different interest cannot be taken as a guide. Only a portion of the railroads in South Carolina have the restrictions of our charter. Their usage would be no criterion.

Usage, to have the force of what is styled in law a "custom," must be uniform, uninterrupted, not a *usus*. If based on a wrong construction of the charter it is a *modus usus* and therefore not a custom.

Usage may be misinterpreted, that is, appearing as a charge by weight, yet bulk may enter in as a factor, or, as in the system of classification of freight, it would be absurd to charge a uniform rate for long and short distances—as for instance for five miles and for five hundred miles. The cost of handling is such that the Road might prefer for short distances to pay the shipper the freight charge to keep freight away.

How are we to construe the statute? No decision of law by any court has construed it. Knox & Gill vs. the S. C. Railroad merely decided that "one hundred miles" was an indivisible unit. This point of charging by measurement was made in Chester. The merchants sued the Road for overcharge, and the jury "came down" in their favor. An appeal was taken from the judgment of the court and decided in favor of measurement by the Judge Thomas, but no appeal was taken to the Supreme Court and it has never decided this question. This case is referred to in my argument in Knox & Gill, to prevent the court from giving a general decision, and confine them to the special point raised in that case, leaving this point for subsequent decision.

Are parties to dispute and juries to decide? This makes many suits as there are articles, and as often as the same article changes shape. Moreover, to leave the question to a jury would leave the jury to decide questions of law, and that too when a corporation is a party. Will it do to resort to the usual meaning of the terms as employed in common parlance? Let us see. The following heavy articles are commonly estimated by measurement: Dressed marble and granite, lumber, hardware in boxes, other heavy articles as bacon in boxes, feathers, bundles of brooms, old rags, bedding, and such things are neither articles of weight nor of measurement. The shape of the article or the manner in which it is packed is immaterial. Here we have the distinction between loose bacon and bacon in boxes, cotton in all its forms, seed cotton, fleecy cotton in bags, light bales of 300 pounds, heavy bags of 900 pounds, and compressed cotton. Any light article could be made heavy if enough were put in one package. Carriages may be set up, or sent in parts. The same distinction may be made as to furniture in parts or furniture put together; also, between empty barrels and barrels filled with liquors.

If we cannot fix an absolute rule in all cases will the shippers be proper parties to construe the statutes? Certainly not. Will the Railroad? Obviously not. Will the carrier? In this case it is the proper party, because the statute is so made that any improper distinction by the Road would inflict lessness of it. If it charges for a bulky article by weight it loses. But when the statute construes itself neither usage, nor parties ought to decide. A contemplation of the charter shows that the statute says a cubic foot of thirty pounds is a cubic foot. This is the key, this the line of demarcation or classification furnished by the statute itself. An article weighing less than thirty pounds to the cubic foot is to be estimated by bulk, one more than that by weight.

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As to the reference to the juries, let me say that just such claims and pretensions by the Road as this have been so disastrous to the country that the people are brought to the point of resistance.

A few words as to the rules of construction. These have been settled. The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. 16 Howard, 435. Also 1 Peters, 514; 11 Peters, 548. If the grant of a franchise admits of two constructions that is to be taken which least restricts the public rights. 8 Wheat, 569; 9 How., 172 and others.

As to the question of incorporation and construction against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. 16 Howard, 435. Also 1 Peters, 514; 11 Peters, 548. If the grant of a franchise admits of two constructions that is to be taken which least restricts the public rights. 8 Wheat, 569; 9 How., 172 and others.

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ment or is clothed with public right and is exercised as a monopoly, it cannot under the common law make more than a reasonable charge. *Munn vs. Illinois*, 1 Otto, 127, 131, 138. The statute of 1878 confirms these rights. For interpreting a doubtful provision in favor of the public, see *Mills vs. St. Clair Co.* 8 How. U. S., 569; *Perkins vs. Ches. & Del. Co.* 9 How., 172, 181; *Creight vs. R. R. Co.* 1 Black, 380. In 5 Wall's Actions and Defenses, 316. Rule applied in questions relating to freights. The construction put by contemporary members of the profession is of importance. *Con. Tempora expositio est fortissima in lege*, 1 Kent, *467. On this point see *Kenneth & Gibson* and *Knox & Gill*, where the S. C. R. R. charged by weight. In the latter case, though the charge would have been legal, estimated by measurement, and though the point had been raised in Chester, it was not maintained, thus showing the contemporaneous construction to have been in favor of weight. Long usage determines a doubtful statute. *Con. Tempora expositio est fortissima in lege*, 1 Kent, *465 n. o. A contemporary construction of the Constitution of the United States, if long acquiesced in, fixes the construction. *Id.* and *Stewart vs. Zaira*, 1 Cranch, 299. Also *Morrison vs. Barksdale*, Harper's L. 192. The custom of the S. C. R. R. appears in cases above quoted. That of this Road is testimony of *Beaty* and others in this case. Mr. Creight, R. R. Agent, admits that when the bales exceed 150 pounds the excess when reaching 150 pounds in a lot was charged as a bale. This he says was long ago. *Contra*, see exhibits, showing charge for excess. See testimony of Agnew, from 1852 till the year first cited, per bale, then fifteen cents per hundred, in no case exceeding the charter limit by weight.

As to common carriers, see *Potter's Dwaris*, pp. 202, 203. Notes 19, 20. As to rules of construction, *Potter's Dwaris*, 178, 179.

COL. ROX IS REPLY.—The statute was not construed in *Kenneth & Gibson vs. the S. C. R. R.* The Road made the point that the charter did not fix the freight. The Supreme Court, however, decided only the one point that the plaintiffs had not protested at the time of payment. The point was not made in *Knox & Gill*. The proper point must be to decide what is the intention of the Legislature. The charter clearly indicates that the dividing line is where the cubic foot weighs thirty pounds.

Judge Wallace announced that he would reserve his decision.

MOUNT ZION GRADED SCHOOL.—The exercises of this school will be held on Monday, 23d September, at 9 o'clock, a. m. No new pupils will be received except upon special application and acceptance. Former pupils must present themselves promptly, or they will be considered as having left. Special branches, \$2 50 per month in advance. R. MEANS DAVIS, Principal.

NOTICE.—The firm of McMaster & Brice is this day dissolved, and a partnership is formed by the undersigned under the style of *McMASTER, BRICE & CO.* Winnsboro, S. C., August 1st, 1879. G. H. McMASTER, JAMES A. BRICE, T. H. KETCHUM.

CROCERY.—A supply of beautiful Porcelain and China Ware, just arrived and for sale at prices which cannot fail to please. *McMASTER, BRICE & CO.* Winnsboro, S. C., August 1st, 1879.

PENITENTIARY BROOMS.—Being agent for the sale of the brooms made at the South Carolina Penitentiary, we offer them to merchants at factory prices. *McMASTER BRICE & CO.*

MACCARONI.—A new supply of Macaroni just received. *McMASTER, BRICE & CO.*

FOR the celebrated Mt. Vernon 1868 Old Cabinet Rye, call at F. W. HABENIGHT'S, Rear of Market Hall.

FANCY GROCERIES.—JUST ARRIVED.

Consisting in part of Cream Cheese, Macaroni, Cakes of various kinds, sweet Cream, Oyster, Cornish, Jumbles, Ginger Snaps, Butter, &c. Canned Goods—Pineapple, Peaches, Tomatoes, Sardines and Sausage. Pickles—Chow-Chow and Cucumbers. *McMASTER, BRICE & CO.*

GINGER PRESERVES!—GINGER PRESERVES!

Corn Starch, pure and fresh, Teas of all kinds, Soap, Starch, &c. We keep constantly on hand a full stock of Staple Groceries, such as Bacon, Meat, Flour, Sugar, Coffee, Salt, Molasses, &c. Bagging and Ties for sale at bottom prices.

N. B.—We are opening daily a splendid assortment of Dry Goods, Boots, Shoes, Hats, Crockery, &c. Give us a call and be convinced. *J. F. McMASTER & CO.*

ROBERTSON, TAYLOR & CO.,—SUCCESSORS TO—GEO. W. WILLIAMS & CO.

Cotton Factors, Wholesale Grocers and General Commission Merchant. 1 3 HAYNE STREET, Charleston, S. C. Will give all business their most careful attention. Consignments of cotton solicited. July 12-3

SMOKE the "Key East" Cigar—the finest in town—for sale by *J. D. McCARLEY*. \$300 a month guaranteed, \$12 a day at home made by the industries. Capital not required; we will give you work, boys and girls make money, fast as they can get it. Those who are wise can see that this notice will send us their address at once and we will send them a copy of our prospect free. Now is the time. Those already at work are laying up large sums of money. Address *J. D. McCARLEY, Malden, Aug 12-1879*

STARTLING ANNOUNCEMENT.

WE TAKE this opportunity of informing our customers that Mr. Groeschel is now in the Northern markets purchasing a LARGE and CHOICE stock of fall and winter goods.

While others may attempt to HUMBUR the public by a great show and parade, WE CONFINE OURSELVES TO SOLID FACTS, and we propose to give our patrons the benefit of all bargains that we ourselves get. WE DO NOT SELL ONE ARTICLE BELOW COST AND MAKE AN EXTRA PROFIT ON ANOTHER. We charge a reasonable profit on all our goods, and guarantee FAIR DEALING TO ALL who may favor us with their custom.

Our regular advertisement with price list will appear soon, and buyers will save money by studying it. Mr. A. W. Brown is still with us, and promises great bargains to all his friends.

SUGENHEIMER & GROESCHEL.

sept 11 AUGUSTA STORE. 1879. FALL OPENING 1879.

To the People of Fairfield and Adjoining Counties: I TAKE pleasure in stating that I have enlarged my business very extensively, having moved into the large and commodious store formerly occupied by Ladd Bros. I am now prepared to offer you DRY GOODS, NOTIONS, BOOTS and SHOES, HATS and CAPS, CROCKERY and GLASSWARE, and also a fine line of Tobacco and Cigars at ten per cent. less than they have ever been sold in Winnsboro.

Having a varied experience and unlimited capital, and buying from first hands for cash only, I defy competition. To farmers buying largely, I will sell any goods in stock at ten per cent. above New York cost. I don't add ten per cent. for expenses, like some of my competitors. My discounts more than pay freight.

Look out for my price list about the 1st of October. I can duplicate any goods purchased south of Baltimore. When you visit Winnsboro don't buy before calling at the AUGUSTA STORE, and examine my stock and be convinced.

aug 4 J. L. MINNAUGH, Proprietor.

THE GREAT VALUABLE INVENTION. THE WORLD RENOWNED WILSON SEWING MACHINE. In workmanship is equal to a Chronometer Watch, and is elegantly finished as a first-class Piano. It receives the highest awards at the Vienna and Centennial Expositions. IT SEWS ONE-FOURTH FASTER than other machines. Its capacity is unlimited. There are more WILSON MACHINES sold in the United States than the combined sales of all the others. The WILSON MENDING ATTACHMENT for doing all kinds of repairing, NOTIONS and PATCHING, given FREE with each machine. AGENTS WANTED. WILSON SEWING MACHINE CO. CHICAGO, ILL., U. S. A.

GO for the Day State Shoe. J. M. BEATY & CO. DRESS GOODS! DRESS GOODS! DRESS GOODS!

WE would respectfully invite an inspection of our Stock of Dress Goods by the ladies of Winnsboro and vicinity. Our stock consists of Iron-frame Grenadines, All Wool Bantings, Lace Banting, Dentelles, Beige, Linen Lawn, Pacific Lawn, Corded Jaconets, Corded Piques, Suitings, &c., &c. A BEAUTIFUL ASSORTMENT of Brown Linen Dress Goods, with Laces for Trimming. Our Stock in all other lines is full and complete. A new lot of White and Colored Trimmings just opened. Second lot of Cassimeres from Charlotteville mills opened a few days since. A lot of Fans, Parasols and Mosquito Netting just in. *McMASTER & BRICE.*

THE ELLIOTT COTTON GIN, WITH IMPROVED ROLL. MANUFACTURED BY J. M. ELLIOTT, WINNSBORO, S. C.

The subscriber has had fifty years experience in the gin business. J. M. ELLIOTT. June 14-3mos

FOR a cool Lemonade or Ice Soda Water, call at F. W. HABENIGHT'S, Rear of Market. N. B.—Automatic Fly Fans for sale here. June 7

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