

The Newberry Herald and News.

ESTABLISHED 1865.

NEWBERRY, S. C., FRIDAY, MAY 19, 1899.

TWICE A WEEK, \$1.50 A YEAR

IS A DOG PROPERTY?

JUDGE J. H. LUMPKIN PAYS HIGH TRIBUTE TO THE DOG.

He Decides That a Canine is Property and in an Opinion Full of Sentiment, Wit and Humor Refers to the Part This Animal Has Played in History, Literature and Art.

One of the most interesting, humorous and entertaining opinions ever handed down by a Georgia judge is that of Judge J. H. Lumpkin, of the Fulton superior court, in which he holds that a dog is property.

The question was raised in the case of Carl Wolfshelm, plaintiff in certiorari, against J. J. & J. E. Maddox. The dog in controversy was owned by Max Kecke, but came into the possession of Wolfshelm. The defendants in certiorari levied or it to satisfy a claim against Kecke, and Wolfshelm claimed the dog was not subject to levy. Judge Orr, before whom the case was tried, held that there was property in a dog, and in sustaining the lower court Judge Lumpkin said:

The only question in this case is whether or not a levy can be made upon a St. Bernard dog. J. J. & J. E. Maddox obtained a judgment in a justice's court against Max Kecke, and had an execution issued which was levied upon a St. Bernard dog, as belonging to the defendant. Carl Wolfshelm interposed a claim. On the trial before the justice, claimant's counsel moved to dismiss the levy on the ground that there was not such property in a dog as to be the subject of levy and sale. The magistrate overruled the motion. Evidence was then introduced, and the magistrate found the dog subject to the execution. The claimant brought the case to the superior court by certiorari. No exception is made to the sufficiency of the evidence, or on any other ground except the one indicated above, to-wit, the contention on the part of the claimant that a dog is not such property as is subject to levy and sale.

THE DOG IN MYTHOLOGY.

The dog has figured very extensively in the past and present. In mythology, as Corberus he was entrusted with watching the gates of hell; and he seems to have performed his duties so well that there were but few escapes. In the history of the past he has figured extensively for hunting purposes, as the guardian of persons and property, and as a pet and companion. He is the much valued possession of hunters the world over, and in England especially is the "pack of hounds" highly prized. In literature he has appeared more often than other animal, except perhaps the horse. Sometimes he is greatly praised, and at others greatly abused. Sometimes he is made the type of what is mean, low and contemptible; while at others he is described in terms of eulogy.

Few men will forget the song of their childhood, which runs:

Old dog Tray's ever faithful;
Grief cannot drive him away;
He's gentle, he is kind;
I'll never, never find
A better friend than old dog Tray."

Nor can any of us fail to remember the intelligent animal on whose behalf "Old Mother Hubbard went to the cupboard."

LORD BYRON'S TRIBUTE.

Few men have deserved and few have won higher praise in an epitaph than the following which was written by Lord Byron on the tomb of his dead Newfoundland:

"Near this spot are deposited the remains of one who possessed beauty with vanity, strength without insolence, courage without his vices. This praise, which would be unmeaning flattery if inscribed over human ashes, is but a just tribute to the memory of Bontwin, a dog who was born at Newfoundland May 3, 1793, and died at Newstead Abbey November 18, 1808."

The dog has even invaded the domain of art. All who have seen Sir Edward Landseer's great pictures will know how much human intelligence can be expressed in the face of a dog. His picture entitled "Laying Down the Law," will not

be forgotten in considering the dog as a litigant.

Thus the dog has figured in mythology, history, poetry, fiction and art, from the earliest times down to the present, and now in these closing days of the nineteenth century we are called upon to decide whether a dog is a wild animal (ferae naturae), in such sense as not to be leviable property; or, if he is a domestic animal (domitiae naturae), whether he is not subject to levy on the ancient theory that he had no intrinsic value if he was not good to eat.

DOGS HAVE GREAT VALUE.

Originally all the animals which are now used by man were wild. One after another they have become domesticated, and subject to his control, ownership and use. As time progressed they gradually lost their character of wildness, and became more and more subject to mankind, and more and more regarded as ordinary property. At this day no one would contend that the horse was not the subject of absolute property because his ancestors were originally wild; and the same may be said of other animals now thoroughly recognized as domestic. Even in the days of Blackstone, while it was declared that the property in a dog was "base property," it was nevertheless asserted that such property was sufficient to maintain a civil action for its loss. (4 Black. Com. 236). Since that day in the evolution of civilization, the dog has not been left behind. He is now not only prized for hunting purposes, as a watchdog, and as a pet, but it is common knowledge that many dogs have an actual commercial and market value. When annually there is held in New York a bench show, at which dogs take prizes amounting to thousands of dollars, and where they are bought and sold at prices which are frequently far larger than are paid for ordinary horses, it is rather late in the day to assert that they are not valuable property.

UNJUST TO CREDITORS.

Dogs are also trained for purposes of exhibition, being sometimes the sole means of support for their masters. It would be an interesting survival of archaic law to say that a showman could put up his tent, give nightly exhibitions of his valuable dogs, making large sums of money from them, get in debt to any given extent, laugh at his creditors and proceed with his daily exhibitions, on the ground that his stock in trade was not subject to levy.

If it be contended that the horse, mule and other animals are used for more practical purposes (some of them as beasts of burden), it need only be asked what animals draw the sledges of the Eskimos and other peoples in the northern latitude? Nor is this confined alone to the arctic regions. Any traveller on the continent of Europe and especially through Belgium, who has kept his eyes open, has seen these animals drawing heavy loads, and often taking the place of other draft animals. To indulge in technical refinement and declare that the dog is not subject to levy, although he belongs to a debtor, is useful to the debtor, can be and is actually used, may be transferred by him to another, and is as much the subject of bargain and sale as any other property, merely because in the remote past the ownership of his progenitors may have been considered qualified or "base." Nor is this untenable on its face. The ancient idea that "animals which do not serve for food, and which therefore the law holds to have no intrinsic value," were not the subject of larceny (4 Black. Com. Side p. 236), has passed away. Now the stomach is not the only criterion of value. Even then, as already stated, a civil action could be brought for the loss of a dog. Generally property which may be sold and possession delivered is a subject of levy, (omitting choses in action and equitable assets), 7 Eng. and Am. Enc. Law p. 127, division V.

SUBJECT OF HUMOR.

The dog has been very often before the courts of the different states,

and of different countries, and has been the subject of a good deal of judicial humor and of judicial learning; but it bears a tinge of the ridiculous to contend that, however many and however valuable dogs a man may own, he cannot be made to pay his debts if he will only invest his money in dogs—a contention which reminds one of the very solemn discussions in some of the courts at a time not very long past, as to whether the oyster was a wild animal.

Before the courts, the dog has received a treatment as varied as that given him by authors. As illustrative of the widely different light in which judges have viewed him, I cite only one or two cases. Monroe, J. in 10 Rich. (S. C.) 52, indulged in some vituperative epithets upon a poor canine who was so unfortunate as to be run over by a railroad train. On the other hand, in the case of the State vs. Harriman, 75 Me. 562, in which a majority of the court held that dogs did not fall within the criminal statute of that state against the killing or wounding of "domestic animals," Appleton, C. J., dissented most vigorously, making use of the following language, (as quoted by the supreme court of Georgia in a case in 93 Ga.): "He is a domestic animal. From the time of the pyramids to the present day; from the frozen pole to the torrid zone, wherever man has been, there has been his dog. Cuvier has asserted that the dog was, perhaps, necessary for the establishment of civilized society, and that a little reflection will convince us that barbarous nations owe much of their civilization above the brute to the possession of the dog. He is the friend and companion of his master—accompanying him in his walks, his servant aiding him in his hunting, the playmate of his children, as inmate of his house, protecting it against all assailants."

THE DOG'S STATUS IN GEORGIA.

I need not stop to discuss the learned dog law evolved by judges of other States and countries. Turning to our own State, I will only glance hastily at the status of our own law with reference to the dog. At the outset, I may remark that the argument used with reference to dogs applies much more strongly to some other animals and to birds. It will be readily perceived that lions, tigers and other wild animals which are captured and reduced from their native State to the subjection of the menagerie, are much less domestic animals, or animals in which there is absolute property, than dogs. So likewise birds which are entrapped and kept in cages, are much nearer their wild state than the dog; and yet it will hardly be contended that all the travelling menageries of the country are free from levy, or that a man will set up an aviary and make an excellent living by selling birds, while his sorrowing creditors hang about his door with a bailiff and a fi. fa., but can come no nearer the desideratum of a levy than to "listen to the mocking bird."

If it be urged that there is no express enactment declaring the dog to be property and the subject of levy, I would suggest that I am unable to find express enactments making a great many other animals which were originally wild, the subject of levy; nor am I aware of any statute abolishing the right of common of pasture, or of estovers or other similar rights, and yet our supreme court has not hesitated to hold that they are not applicable to present conditions.

SOME GEORGIA DECISIONS.

In the case of Manning v. Mitchell, 69 Ga. 447, the supreme court of Georgia held that a canary bird which had been caught and tamed was property for which a possessory warrant would lie. In the case of Jamison v. Southern railway, 75 Ga. 444, it was held that a dog was not such property, that if it were killed by a railroad train, a presumption would arise against the company, or that there could be a recovery for its mere negligent killing. In the opinion the case in 10 Rich. 52, above referred

to, is cited as authority, but an examination of the opinion in that case will show that the justice rendering it, used language referring not only to dogs, but to domestic fowls and animals other than cattle.

It is true that in the course of the opinion in the Jamison case the learned justice who delivered it, made use of the following language: "Dogs are not property in such sense as makes them assets belonging to the estate of a deceased person, and are never inventoried and appraised, however numerous or valuable, nor are they subject to levy and sale, so far as we are informed." But this was only said arguendo. No question of levy and sale was before the court and while the justice was one distinguished for his learning, such a casual remark cannot be held to have been the deliberate decision of the court.

THE CONSTITUTION ON DOGS.

The constitution of the State (civil code, section 5883) authorizes the general assembly to impose a tax upon such domestic animals, as, from their nature and habits, are destructive of other property. By the use of the expression "other property," it is evident that these animals were treated as property by the fundamental law of the State.

Further, dogs are by the statute law of the State the subject of larceny. (Penal code, Sec. 164. Section 3822 of the civil code provides for liability on the part of "the owner" of a dog for damage done by it under certain circumstances.

In the case of Patton v. The State, 39 Ga. 111, it was held that a penal statute then under consideration did not apply to the injuring or killing of animals of any kind; and therefore did not apply to the dog. The opinion in that case is both interesting and instructive, but it did not under take to decide that a dog was not property; and this was distinctly so declared in the case of Graham v. Smith, 100 Ga. 434. On page 436, referring to the case of Patton v. The State, it is said: "In the latter case, however, the ruling was based on the construction that the subjects of that particular statute were inanimate property." In the case last cited it was held that, "The owner of a dog has such a property in it as will enable him to maintain an action of trover for its recovery in case of the wrongful conversion." In the well considered opinion it is expressly declared that a dog is property. It seems to me that the principles there enunciated control this case.

PROPERTY WAS SUBJECT.

Let it be remembered that in a trover case the plaintiff has the option of taking a verdict for the property, or a money verdict. If he should take a money verdict, surely the law did not contemplate that he should sit in court with his judgment and fi. fa. in his pocket, and watch the defendant carry the dog away, because, although he could recover a judgment for its value, he could not realize it by levy.

In the case of Wilcox v. The State, 101 Ga. 563, it was distinctly held that the words "domestic animals" included dogs.

It may further be noted that this was a claim case in which the claimant made affidavit that the property levied on was not subject to levy, but was the property of the claimant. It would be a startling idea that a man could make an affidavit that the thing levied on was property, was his property, was recoverable by him as such under the levy, and yet that the levy was void because the property was a dog; or in other words, that it was property subject to claim but not to levy.

Upon consideration of the whole case I am of the opinion that the property was subject to the levy, and that the judgment of the justice was right.

Let judgment be entered accordingly.

CASTORIA.
The Kind You Have Always Bought
Bears the Signature of *Chas. H. Petter*

SOUTHERN'S NEW SCHEDULES

THROUGH SERVICE FROM CHARLESTON TO GREENVILLE.

Double Daily Trains to be Run—The Changes Go Into Effect on the 22nd Inst.—Sleeping Cars for the Up-Countrymen.

(The State, 16th.)

The new schedules of the Southern railway in South Carolina resulting from the absorption of the South Carolina and Georgia lines have been prepared by the officials and will go into effect on next Monday, the 22nd inst. For the first time in the history of the Columbia and Greenville division, double daily trains are to be operated, and the through train service from Greenville to Charleston is provided for. A complete rearrangement of the schedules has been made, but the official time tables have not yet been issued.

The State has, however, been able to get practically all of the figures though in some instances the exact ones cannot be given.

There is to be no change whatever in the present schedules and trains operated between Charleston and Asheville and Columbia and Asheville, the only thing being that very shortly a parlor car from Charleston to Asheville will be put on for the summer.

The only change on the division from Columbia to Augusta will be that the train now leaving here for Augusta at 4 a. m. will henceforward leave at 4.30 a. m., going to Augusta at 8 a. m. as at present.

On the Charleston and Columbia and Greenville divisions a through train will be put on, leaving Charleston between 2 and 3 a. m., arriving here at 7.10 a. m., taking breakfast here and leaving at 7.25 a. m., arriving at Greenville at 12.15 p. m. This train will carry a through sleeper from Charleston to Greenville and will make connection for Anderson, Abbeville and Atlanta, the latter at Greenville. Returning this train will leave Greenville at 5.30 p. m., arriving in Columbia at 11 p. m., leaving Columbia at 11.10 p. m. and arriving at Charleston at 6 a. m. Those interested may see for themselves how this schedule works for the three cities and intervening towns affected.

The present trains between Columbia and Greenville will be discontinued and their places taken by a train leaving here at 2.30 p. m., reaching Greenville at 7.30 p. m., and returning, leaving Greenville at 6.45 a. m., arriving here at 11.40 a. m., making connection with the train for Augusta leaving here at 11.45 a. m. The up train will connect with the main line No. 36 at Greenville for Atlanta.

These schedules provide for morning and afternoon trains out of both Greenville and Columbia, and the authorities think it will give the people of both cities what they want.

No other immediate changes are to be made so far as known.

The advantages and disadvantages of the new schedules will, of course, be fully discussed by the people of all places affected, but it is said, that they have been made only after the most careful consideration of all interests affected.

Doctors Say;

Bilious and Intermittent Fevers which prevail in miasmatic districts are invariably accompanied by derangements of the Stomach Liver and Bowels.

The Secret of Health.

The liver is the great "driving wheel" in the mechanism of man, and when it is out of order, the whole system becomes deranged and disease is the result.

Tutt's Liver Pills

Cure all Liver Troubles.

CASTORIA.
The Kind You Have Always Bought
Bears the Signature of *Chas. H. Petter*

HE WAS NOT SNUBBED

What Gen. Joe Wheeler Says of the Charleston Incident.

The following special to the Charleston Post from Chattanooga gives what Gen. Wheeler has to say about the reunion incident:

Gen. Joe Wheeler passed through the city this morning en route to Washington from Riverton, Ala., where he went with the river and harbor committee of congress.

He is very indignant over the dispatch sent out that he was snubbed at Charleston. Speaking of it here he said: "I was not ill treated at the Charleston convention. I received the most hospitable attentions from the hands of the citizens of that city and the veterans there. The memory of the treatment I received there will remain with me all during my life. It was one of the most pleasant visits I have ever had to a Confederate reunion and I can't see where the story originated, unless it started from the fact that by a mere oversight the carriage I was to ride in during the parade did not come for me. This I know was unintentional."

"I was visiting with my daughter the home of Judge Brawley and was told to wait there and that a carriage would call for me to go in the procession. My daughter accompanied Judge Brawley's family, with other guests, to witness the parade and I waited behind for the carriage. By mistake the committee appointed to look after the carriage failed to send mine. I knew it was unintentional, and it was explained at once, after the committee found it out. Gen. Walker was courteous to me in every respect and I am very sorry indeed such an injustice has been done."

"It is also an injustice to the citizens of Charleston. They are not the kind to snub anyone, but are of the very best type of hospitable people. I shall at my earliest opportunity write to the committee at Charleston and assure them that the press reports do not express my feelings, and that I am sorry that such a false statement should be sent out against such noble people."

How Is Your Grip?

Not getting along as well as you expected? That is the way grip acts when it is not taken in hand and driven out of the system at once. The poisons left by the grip germs keep right on destroying the vitality and undermining the health. You lose your appetite for food and what little you eat seems to do no good. Your nerves are unstrung, you become weak and exhausted and finally you are overpowered by some chronic disorder which takes you to an untimely grave.

Why should you let the grip run until it gets such a hold on you when a few bottles of Dr. Miles' Nervine would fix you up all right? It is the greatest nerve medicine and health restorer ever known and thousands of grip's victims are finding in it a safe and sure means of regaining lost strength and vitality.

"I found myself with a very weak stomach, and every time I tried to eat I would become nauseated, sometimes belching wind and frequently finding relief only after vomiting. My nerves became affected and I was almost blind for several months. Finally I began using Dr. Miles' Nervine; and when I had used one bottle I was greatly improved. After taking two more bottles my stomach trouble was entirely gone and I have had no return of the symptoms in over three years."

Try Allen's Foot-Powder.

A power to be shaken into the shoes. At the season your feet feel swollen, nervous and hot, and get tired easily. If you have smelly feet or tight shoes, try Allen's Foot-Powder. It cools the feet and makes walking or v. Relieves corns and bunions of pain and gives rest and comfort. Try it today. Sold by all druggists, grocers, shoe stores and general storekeepers everywhere. Price 25c. Trial package FREE. Address, Allen S. Olmsted, LeRoy, N. Y.

SOUTHERN TEXTILE INTEREST

The Rapid Development of Textile Manufacturing Using Interests—A Railroad's Laudable Work.

The Textile Excelsior, a leading authority in textile interests, has the following to say of the Southern cotton mill development and of the Southern Railway in connection with it:

"The rapid development of textile manufacturing interests in the Southern States has created a great deal of interest among writers for the daily and trade papers. That development has been so marked as to attract not only the attention of men actively connected with the industry, but of economic and industrial students throughout the entire country. There must, of course, be certain practical advantages for manufacturing, advantages of a most pronounced character, before such a development could be possible. The South has these advantages."

"The greater growth of the textile industry in the South has naturally been in the development of cotton manufacturing. And this development has been along the line of certain large railway systems, notably the Southern Railway."

"In 1890, according to the returns made to the Census Bureau, there were in the States of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia 36,206 looms and 1,533,250 spindles. In these same States, on January 1, this year, there were 95,552 looms and 3,796,000 spindles. This shows an increase of 164 per cent in the former and 147 per cent in the latter. There are in these States now 410 cotton mills, of which 241 are located on the Southern Railway."

"Judging from present indications the development of the textile industry in the South has just begun. Several new mills have been located along the line of the Southern Railway to be constructed within the next twelve months, and on some of them work has already begun. In addition to these new mills a great many of those now in operation are adding new machinery and in other ways making preparations to enlarge their output."

"A word of praise is due the Southern Railway for the work it has done in promoting cotton spinning and other textile manufacturing in the South. It is doing notable and laudable work in developing the rich section of the South that it traverses. The many new mills that are going up show that the people along its lines appreciate the railroad's efforts and are endeavoring to assist it in utilizing the advantages that nature has placed within their reach."

"The fact that the Southern has been able to equip and manage one of the best railway systems of the country shows conclusively that the South is prospering, and under like conditions will continue to prosper."

Just the Same.

The story is told of a militiaman who, on the occasion of a sham fight heard the general give the order:

"Everything is to be done the same as in actual warfare."

Presently when the fight was getting rather exciting, the man took his heels.

"Where are you going?" demanded the General.

"Well, sir," the man replied, "I am running away the same as I would do in actual warfare!"

\$100 Reward \$100.

The readers of this paper will be pleased to learn that there is at least one dreadful disease that science has been able to cure in all its stages, and that is Catarrh. If it's Catarrh Cure is the only positive cure known to the medical fraternity. Catarrh being a general term for all the various conditions of the urinary tract, including cystitis, urethritis, etc., and the cure is the same. It is a constitutional remedy, acting directly upon the blood and purifying it from the source of the disease, and giving the patient strength and vigor. It is the only medicine that has been shown to be effective in the treatment of Catarrh. It is sold by all druggists, grocers, shoe stores and general storekeepers everywhere. Price 25c. Trial package FREE. Address, Allen S. Olmsted, LeRoy, N. Y.

Be in style and buy Dress Selby Slips, pers. at Mimsburgh's.