WON'T ESTOP DAMAGE CLAIMS.

THE NORTH CAROLINA SUPREME COURT HITS RELIEF DEPARTMENT.

Railroad Cannot Circumvent the Right of an Employee to Exact Damages by Establishment of Benefit Department.

Wilmington, N. C., April 18.—The decision of the State Supreme Court this week in the case of Barden vs. the Atlantic Coast Line has been received here with much interest in legal circles and this decision may open the gates for the bringing of some other suits. It is also recalled that an interesting personal damage suit was landed out of court not long ago in the superior court of this county under a ruling the reverse of that made by the Supreme Court. This has also added much to the interest. It was a case brought for personal damages by a former employe of the Atlantic Coast Line, but counsel for the defense contended in bar of such recovery that the injured man had received benefits from the relief department, of which he had been a member, after being injured. The case was argued at length before Judge Allen, and ex-Mayor A. G. Ricaud, of counsel for the defense, made an especially strong argument in favor of the very point now decided by the Supreme Court. He contended that the road could not shirk its liability by reason of such an association, which all employes had to join, even though the injured man received benefits after being injured. The court held against this contention and the defense gave notice of an appeal. However, the defendant had no money to perfect his appeal and so he loses on a point now held in his favor by the highest tribunal in the State, and which up to this time had not been settled. However the New Hanover county case is out of court the appeal not having been perfected and cannot be re-instated.

The Raleigh News and Observer yesterday made the following interesting report of the decision:

The most important case decided by the Supreme Court of North Carolina this term is the case of Barden vs. Railroad Company, the opinion in which is written by Judge Manning and was handed down on Wednesday of this week.

The question which gives importance to the case is this: Can a railroad by the establishment of relief departments governed by the railroad, release itself from suits for damages when the injury was caused by its negligence? Judge Manning in the opinion of the court says: "In our opinion this stipulation is an ingenious scheme devised by the company to avoid responsibility for its negligence and as such is inequitable and void."

In 1897 the State legislature passed the Fellow Servant Act, Revisal 1905, section 2646, which gives to all employes of railroad companies in this State the right to maintain an action against the railroad when they are injured by the negligence of any of their fellow employes or by defects in the machinery or appliances of the company, and further provides that no agreement made by any employe shall waive the benefit of this section. It has been held by the Supreme court that this section was valid and constitutional, and that a railroad could not enter into any contract or agreement waiving their liability for damage to person or property caused by their negligence.

The railroad (the Atlantic Coast Line Railway) established a relief department in which only its employes are admitted as members and in which they can remain as members only so long as they continue to be employes. As members, they are required to contribute each month a fixed amount, regulated by the monthly pay; the lowest paying 75 cents per month, and the highest $8.25 per month, according to the benefits to be received, which range from $250 to $5,000. Each member agrees to be bound by the rules and regulations of the Relief Department. Rule 64 provides: "The acceptance by the member of benefits for injury shall operate as a release and satisfaction of all claims against the company and all other companies associated therewith as aforesaid, for damage arising from or growing out of such injury." In the latter part of the same rule is this provision: "If suit shall be brought against the company or any other company associated herewith as aforesaid for damages arising from or growing out of injury or death occurring to a member, the benefits otherwise payable and all obligations of the Relief Department and of the company, created by membership of such member in the Relief Fund, shall thereupon be forfeited without any declaration or any other act by the Relief Department of the company."

In short the railroad maintains a department to which each employe pays a monthly amount and because of these payments, the railroad guarantees certain benefits if they are injured or killed, but they add a provision that if any employe or his legal representative brings suit against the railroad for this injury or death, then he forfeits everything he has paid to the relief department and gets nothing in return for his money. Is this an attempt to evade the law of the State giving employes the right to sue railroads for damages when they are injured or killed by negligence of the railroad?

Judge Manning says: "In our opinion, is becomes necessary to determine the validity and effect of the agreement, in order to fix the character of the Relief Department of the defendant, whether it is an agency or an association with only benevolent aims and purposes, or a mere agency created by the defendant to serve under the cloak of charity, the purpose of avoiding liability for negligent injuries received by its empolyes." * * * "The relief department of this defendant has been declared by this court in Nelson's case, 147 N. C. 103 to be a mere agency of the defendant; it is not incorporated and has no separate entity." The railroad controls it and forces its members when they have been injured, to release the railroad from all liability or else to forfeit the benefits for which they have been paying for years and to forfeit all they have paid in to the Relief Department. "Is it not the obvious purpose of the company to place its employes, who may be negligently injured in the position to forego the benefits of an association which they have helped to create, or to take the chance of a suit with it for damages in the courts, with its attendant annoyances, delays and uncertainties? What doth it advantage the employes? Is not all the benefit to the company? This choice of remedies is to be made only by those employes whose injuries or death are caused by the negligence of the defendent. Upon no other contingency is the employe forced to choose; in no other contingency is he confronted with an election of remedies, nor is he under the compulsion of choice. Further, those who are injured or killed by negligence, can receive no benefit stipulated in the rules and regulations, "unless and until complete release of action for damages is properly executed. Such is the compulsion of the stipulation; such is the "letter of the bond." The election of remedies originates in and is predicated upon this stipulation. In our opinion this stipulation is an ingenious scheme devised by the company to avoid responsibility for its negligence, and as such, is inequitable and void. Such would seem to be the view of the Federal Congress, by its adoption in 1906, of the following enactment, 34 Stat. L. 234 approved June 11, 1906. No contract of employement, insurance, relief benefit or indemnity for injury or death, entered into by or on behalf of any employe, nor the acceptance of such insurance, relief benefit, or indemnity, by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to, or death of such employe." In 1908 Congress passed another enactment making the above provision, that the railroad by this means could not prevent suits for damages occasioned by its negligence, even stronger, but of course, these enactments apply only to interstate commerce.

The Supreme Court of North Carolina apparently holds that the Relief Department with its provisions, that employes pay so much each month for benefits if they are injured or killed and that prevents them from instituting suits against the railroad unless they forfeit everything paid in and the benefits accruing to them, is an attempted evasion of the law and is void. The employee is entitled to the benefits for which he has paid and also is entitled to enter suit if he deems it advisable.

DOCTORS ELECT OFFICERS.

Medical Association Now in Session At Laurens.

Laurens, April 19.—At a meeting this afternoon of the house of delegates of the State Medical Association, now in session here, officers for another year were elected, as follows:

Dr. J. H. McIntosh, of Columbia, president; Dr. J. W. Jervey, of Greenville; Dr. R. B. Epting, of Greenwood; Dr. R. E. Hughes, of Laurens, vice presidents; Dr. E. A. Hines, of Seneca, secretary; Dr. C. P. Aimar, of Charleston, treasurer; Dr. John L. Dawson and Dr. Hines, chosen as delegates to the next annual meeting of the American Medical Association.

"Mark Twain" Grows Weaker.

Reddin, Conn., April 19.—Samuel L. Clements, (Mark Twain,) has grown a little weaker. Dr. Robert H. Halsey, of New York, who has been at Stormfield the greater part of the time since Mr. Clemens returned here, said tonight:

"Mr. Clemens is comfortable tonight and passed a quiet day, though he seems to have grown a little weaker."

WICKERSHAM A CATSPAW.

HE IS TRYING TO SAVE COTTON GAMBLERS.

Lewis W. Parker Says That Wickersham's Procedure Against Hayne-Brown Group Would Have Effect of Protecting "Those Who Have Sold Beyond Their Possession"—Southern Cotton Mills, He Explains, Have No Desire to See Cotton Fall, and Hence Have Agreed to Take Up All Offered in New York—The Administration and the Exchange.

Greenville, April 19.—"I think it most unfortunate that the government should intervene in the effort to protect those who have sold beyond their possession," characteristically said Lewis W. Parker, president of the American Cotton Manufacturers' Association, today, when asked concerning the action of the government in ordering an investigation of the alleged pool to keep the price of cotton up.

"The Southern mills do not wish to see a decine in the price of cotton," he continued, "and the stand of the government is unfair. Apparently, it originated in Wall street on the part of the bears, who have beeen selling to keep the price of cottton down, and who, by this investigation, wish to force Messrs. Hayne, Brown and others to show their hands, to find out their methods and their supply cotton on hand, and the like. That part of the press dispatches which alluded to a contract of the 26th of February, referred to an agreement by the Southern mills to take care of the cotton tendered in New York. I learned of the action of Attorney General Wickersham last night and sent the following telegram to Senator E. D. Smith at Washington:

"'Have just learned of action of grand jury in New York, under advice of Attorney General Wickersham, in reference to New York cotton exchange. The effect of this is to assist the bears out of a dilemma in selling cotton they did not have, thus depressing the market. The effort of Southern mills has been to sustain prices and to this end they have agreed to take up cotton tendered in New York. There is nothing unfair or illegal in their agreement with Hayne and Brown, and I urge you to protest against the use of the government's power in forcing, at this time, a disclosure of their plans in the effort to make a bear raid. See Adamson of Georgia, who understands matters."

"The situation is this: As known throughout the season, the mills have had a difficult job to get an adjustment of cotton goods to a parity with the prices of cotton. With the scarcity prevailing in cotton during the present season, it is difficult to say what is a fair price of the commodity; but from November on I think it has been recognized that probably 15 cents to the producer represented that fair price. In November and again in January those who were adverse to the prevailing prices of the commodity made concerted efforts to break the market by selling in large quantity, hoping and expecting to be able to repurchase the cotton at lower prices. Those thus selling the market have oversold themselves, and purchases have been made by Messrs. Hayne, Brown and others, who are simply asking those who have sold to deliver that which they speculatively sold without having cotton to sell.

"The Southern mills do not want to see a decline in the price of cotton, for two reasons. In the first place, to a considerable extent they have purchased cotton in the belief that the high prices prevailing during the fall and winter were more or less justified by the crop condition. In the second place they regard it as evidently problematical what will be the size of the crop this year, and what should be a legitimate price for cotton next fall. On the exchange the prevailing prices for fall cotton are now approximately 12 1-2 cents; and, so far as we can see, these prices should prevail in the fall. If through the selling movement on the part of bears the prices for fall deliveries are materially reduced, buyers of goods will fix their estimate of the value of goods on the basis of the reduced prices of futures; whereas there is every reason to believe that an abnormal demand for cotton in the fall will keep prices sustained for the spot cotton and in all probability above 12 1-2 cents, even though the crop be very large.

"Under these circumstances, inasmuch as the effect of constant selling of the market by bears would have a constant tendency to reduce the price of cotton, the Southern mills have agreed to take up the cotton in New York, hoping to have thereby a strengthening tendency on the cotton market. The bears, who have been selling what they did not have, are now seized with a panic and are showing the white feather and have sought the assistance of the government in this condition of affairs.

"I think that it is most unfortunate that the government should intervene in the effort to protect those who have sold beyond their possessions. It also is unfortunate that in this matter Mr. Wickersham, the attorney general, at whose direction the inquiry is being made, should be the law partner of Mr. Taft, the counsel of the cotton exchange, and that Mr. Taft, the counsel, is the brother of the president. It has come to a pretty pass in the government when it is no crime for a set of men to sell what they don't possess, but becomes a crime for others who are interested in the maintainance of prices of the raw material to act together so as to compel those who have sold to deliver what they have sold."

In Spartanburg.

Spartanburg, April 19.—The day has brought forth no crystalization of opinion among the cotton mill presidents of Spartanburg upon the action of Attorney General Wickersham in instituting proceedings against the alleged Hayne-Brown cotton pool, many of the most prominent mill men are out of the city, and others who are here say they are not sufficiently informed as to the meaning of this action to comment on it at this time. There are those who think the government has made a blunder.

Aug. W. Smith, president of the Woodruff cotton mills and head of the chamber of commerce, when asked last night what effect the action of the federal government against the leaders of the bull campaign would have on the mills of the Piedmont, said that he was not sufficiently acquainted with the subject to speak with any authority.

Another mill present, who declined to permit the use of his name, said: "This is a subject in which I am so very much interested that I hardly know where to begin. There can be no question that it is the outcome of that same old feeling that existed between the New England States and the South more than 40 years ago. I do not mean to say that all the bulls are in the South and all the bears in the North.

"I have had them to come to me from the New England States and say, 'Why don't you of the South raise more cotton?' I have invariably answered them with the question, 'what is the use to raise more and raise it at a disadvantage?" they have done all they could to depress the price of cotton and having failed they have appealed as a last resort to the government. They do not seem to realize that the Southern farmer is independent.

"This present action may develop into one of broad significance. At this stage one can not foretell the result. The New Englander can not see why it is the Southern farmer can't raise cotton now as cheap per pound as he did some years ago.

"At the time to which they refer the Southern farmer was what you might term the slave to cotton. Since then he has risen to a height of independence, and it will be of interest to watch the outcome of the present action."

Just Instituted by Bears.

Easley, April 19.—"I think the movement of Attorney General Wickersham was intigated by the bear clique in New York to reduce the price of cotton goods," said W. N. Hagood.

"A combined effort has been pursued for several weeks to demoralize the mill industry and ruin the holders of spot cotton which was not materalizing fast enough, hence this movement to further depress prices."

May be Excusable.

Anderson, April 19.—Concerning the government's move against the leading cotton bulls J. D. Hammett, president of the Anderson Cotton Mills, the Orr Cotton Mills and the Chiquola Cotton Mills, said tonight:

"I have no sympathy with any movement which unduly depresses prices at the expense of the producer, neither have I any sympathy for a movement which enhances prices apparantly beyond the point consumers can afford topay and that is particularly true when the producer reaps little if any benefit because of the inuation in value of any commodity. As I see it the present inflation in value in cotton is largely because of the speculative interests and it is immaterial to me whether the speculator is on the bull or the bear side.

"I think his ability to inflate or depress prices of any commodity which is necessary to the public good should be condemned. I am averse to the government going too much into private affairs, but if the government can legally prevent inflation in values which is ruinous to the public or if the government can prevent depression in prices that is ruinous to the producer then it may be excusable for the government to take action."

Greenville, April 19.—A conference of the cotton manufacturers of Greenville and vicinity was held this afternoon for the purpose of discussing the action of Attorney General Wickersham concerning the proceedings he has instituted against the alleged Hayne-Brown cotton pool. While no official statement is given out from the meeting, it may be stated that the intervention of federal authorities in the market just at this time is deemed unwarranted, and is taken as showing a possible bias in favor of the market's depression. Individual statements concerning the situation have been obtained from a number of mill men and these outline plainly the position of the manufacturers.

Lewis W. Parker, president of the Olympia and Granby mills of Columbia and Victor and Appalach mills of Greer, said, after the conference: "If the action of the grand jury in New York looks towards the investigation of the purpose of certain Southern mills to take up cotton in New York, I can only say that I have purchased contracts on the New York cotton exchange and have arranged to accept the cotton due on these contracts. The New York cotton exchange has always claimed that its contracts represented actual cotton and that there would be delivered actual cotton when contracts were purchased. The Southern mills have simply found it to their interest to buy these contracts and expect the cotton, and the New York exchange owes it to itself to see to it that the cotton is delivered.

"There has been long in my mind a view that the effect of extreme speculative selling of cotton contracts was to depress the price of spot cotton and I have felt that the only way to teach those who sold what they didn't have a lesson was for the spinners who need cotton to buy contracts on the exchange. This year conditions were such that the mills who needed cotton, inasmuch as cotton was selling considerably cheaper on the New York cotton exchange than it sold in the South, were justified in buying on the exchange. Besides that, it has been to the interests of the spinners to maintain a steady price for cotton and to prevent the extreme fluctuations which have appeared from time to time."

Capt. E. A. Smyth, president of the Pelzer mills, said that he understood that the representatives of the New York cotton exchange, when they testified before the congressional committee to investigate the New York cotton exchange, said that all sales on the New York exchange were expected to be for delivery of actual cotton and that the exchange stood to see that all cotton sold by members of the exchange was delivered. Some weeks ago the New York cotton exchange depressed the price of contracts in New York far below a parity with the value of spot cotton in the South, and the mills needing cotton felt they could secure cotton cheaper in New York by buying those contracts than they could buy the actual spot cotton in the South at the time.

"They did so, I understand, having two objects in view," he said. "One to buy cotton cheaper than they could buy it at home, and believing that the cotton would be delivered to them without question, according to the testimony above referred to, and the second reason was that the New York contracts, being depressed, were having an injurious effect on the value of cotton goods, and by buying the cotton in New York they believed they could maintain the full relative value of the New York contracts on a parity with spot cotton, and in this way stimulate the dry goods business. So far their expectations have been realized and cotton quotations in New York, on which values are based as a general rule, have been maintained nearer the value of spot cotton and the law of supply and demand has been followed; but it would appear now that some cotton dealers in New York have sold cotton that they did not have and are applying for relief in some way to avoid filling their contracts with the cotton mills."

President J. M. Geer of Easley mills said:

"The interference by Mr. Wickersham is simply outrageous. An attempt is being made by the government to assist the bears in depressing the South's greatest commodity, cotton. Why deny consumers the right to demand the delivery of an article bought in good faith? The suit must evidently be at the instigation of bears who have sold and are unable to deliver. Shame on the government for allowing itself to be used as a tool."

HALE TO RETIRE ALSO.

Announces He Will Not Again be Senatorial Candidate.

Augusta, Maine, April 19.—United States Senator Hale, of Maine, in a letter dated at Washington, D. C., April 18, addressed to Byron Boyd, chairman of the Republican State committee, announces that he will not again be a candidate for the Senatorship, and adding his declination to "engage in a conflict for that position."

DAUGHTERS HAVE LIVELY TIME.

EXCITING SCENES AT YESTERDAY'S D. A. R. SESSION.

Matter of Censuring Miss Mary R. Wilcox, Recording Secretary General, for Alleged Insurbordination, Caused Terrific Parliamentary Outbreak.

Washington, April 19.—The forecasted storm broke in the nineteenth Continental Congress of the National Society of the Daughters of the American Revolution today, and the administration forces were sustained in their first skirmish with the opposing faction. The contest centred around Miss Mary R. Wilcox, recording secretary general, who, after a parliamentary wrangle, was censured by the Congress for issuing a circular criticising Mrs. Matthew T. Scott, the president-general of the Society, who had dismissed Miss Agnes Gerald, a clerk at Continental Hall, for alleged insubordination.

The question of disciplining Miss Wilcox was presented to the convention by Mrs. Scott in her report as chairman of the national board of management. Instantly there was a chorus of voices claiming recognition of the chair. Finally Mrs. John C. Ames, of Illinois, was recognized and she moved that the board's recommendation be adopted.

This was a signal for further pandemonium. Miss Wilcox arose and endeavored to read a statement defending her course, but was interrupted and declared out of order, because she was discussing the subject matter of the board's resolution, and Mrs. Ames' motion. A parliamentary wrangle ensued, and the Convention was thrown into confusion. Leaders of both factions were on their feet and motions and counter motions came from all sections of the hall.

The parliamentarian of the Society finally was called to the rescue and, when order was restored, Miss Wilcox said if she had offended the president-general personally or the Society, she was sorry, but she had only tried to right what she believed to be a wrong. For the last part of the remark she again was declared out of order.

By a distinctive viva voce vote the motion of censure then was passed.

MAKING LITTLE HEADWAY.

Proposed Government Cotton Inquiry Moving Slowly.

New York, April 19.—Little or no progress was made by the government today into its proposed investigation of the alleged pool in raw cotton. Fourteen prominent New York brokers appeared at the Feedral building in response to subpoenas. ready to testify, but because of the pressure of other work the grand jury was forced, temporarily, to abandon the investigation early in the afternoon, after only four of the witnesses had been examined. The inquiry will be resumed on Thursday.

Among those who appeared in response to subpoenas were: William P. Jenks, of Craig & Jenks; Evans R. Dick, of Dick Brothers' Company; J. Temple Gwathmey; Norris Seller, of Dick Brothers' Company; John H. McFadden, of George H. McFadden & Brothers; Nathaniel L. Carpenter, of Carpenter, Baggott & Co.; Charles T. Revere, William D. Martin, Eli B. Springs, and Richard A. Springs, of Springs & Co.; George W. Neville, Edward Moyse, David H. Miller and William R. Craig, of Craig & Jenks.

As the witnesses left the grand jury room they were directed to the district attorney's office, where they were questioned by Clark Kercher. Mr. Kercher said that, while, of course, future action in the case would be contingent on the action of the grand jury, he was familiarizing himself with the case, so as to be prepared for any developments.

AMERICAN GETS THIS HEIRESS.

Women Fight to Obtain View of Gould-Drexel Wedding.

New York, April 19.—Miss Marjorie Gwynne Gould, eldest daughter of George J. Gould, and one of the richest and most attractive girls in America, is tonight the bride of an American. In a heavy down-pour of rain she was married at 4 o'clock this afternoon to Anthony J. Drexel, Jr., of Philadelphia, forming an alliance between two of the wealthiest families in the land. St. Bartholomew's Episcopal Church, at 44th street and Madison avenue, was thronged, and outside police reserves kept back a crowd of hundreds, who, wet to the skin, stood on the sidewalks for nearly an hour hoping to catch a glimpse of the bride.

Newberry is pulling for a Y. M. C. A. building to cost from $30,000 to $40,000. What will Sumter do? Just watch and see. 200 will attend the smoker tomorrow night. Are you one of them? Show that you are willing to help Sumter in this enterprise by being on hand.