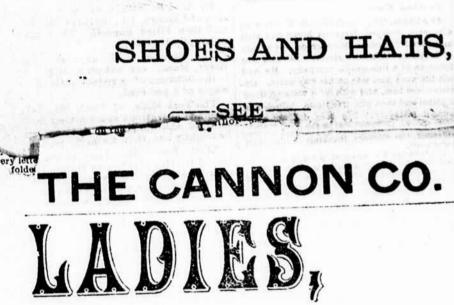


#### VOL. XXVII. --- NO. 42.



### WHEN YOU WANT

# CLOTHING,



## UNION, SOUTH CAROLINA FRIDAY, OCTOBER 16, 1896.

THE UNION TIMES.

### THE C. K. & W. MUST RUN.

#### OPINION FILED BY JUDGE TOWNSEND.

RELATIVE RIGHTS OF RAILROADS AND THE PUBLIC - FRANCHISE WAS SOLD WITH THE ROAD-PUBLIC ENTITLED TO ITS EXERCISE-THE ORDER TO BE CARRIED INTO EF-FRCT FORTHWITH.

The long looked for decree from Judge Townsend in the C. K. & W. mandamus case arrived yesterday afternoon from Union and was filed in the clerk's office.

The prayer of the petitioners was granted and Jas. T. Williams is ordered to forthwith start operations on the road for the transfer of passengers and freight. If he doesn't wish to do this he must sell the road to some one who will.

The judge reviews at length the question of a railroad being a public highway in the operation of which the public rotains vast interest, and quotes numerous authorities in support of his contention that the road must be kept in operation.

The franchise was sold along with the road. The right to operate a road is a franchise and the public is entitled to its exercises by the power.

The decree abounds in many delicate points of law and touches upon one of the greatest questions of the age-the relative rights of railroads and the public.

T. P. Cothran and Mr. Williams,

Following is the text of the decree: STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE. In Court of Common Pleas.

The State, ex-relatione, T. B. Cun ningham, John H. Roe, W. W. Benson, R. W. Anderson, H. Y. Batson, J. & C. R. Co. vs. Chappell; Rice and E. M. Froeman, relators, vs. 84. Averill, Receiver vs. So Ry. James T. Williams, owner of the lo. et al Mss.

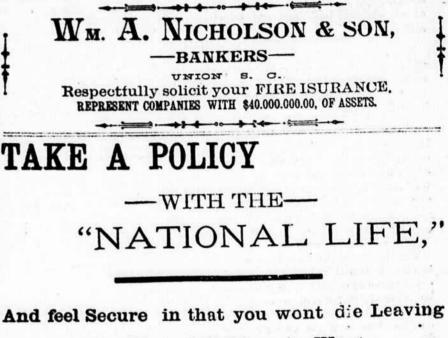
first established business communities have sprung up along its line and they are absolutely dependent upon its operation for railroad transportation. The respondent in his return takes the position that he cannot be compelled to operate the road inasmuch as he was only a purchaser of the property and was under no obligation to carry on business of a common carrier. He says, further, that the railroad is in a bad condition and will not pay running expenses and that he

is unable financially to operate it. Railroads are public highways. They are authorized to be constructed. more for the public good than for private gain. The companies constructing them are vested with power to condemn lands for rights of way; but private property cannot be taken except for a public use. Taxation for their construction has been held by all the courts, yet taxes can be levied only for public purposes. Railroads are therefore matters of public concern; the public has in them an easement as it has in canals, turnpikes, etc. The railroad itself is owned by the company, but this ownership is subservient to trust in favor of the public. The relative rights may be stated thus:

The public has the right to services of the railroad upon payment of lawful and reasonable charges; the owner is bound to render this service hustle. Correspondence solicited. and can deny it to none, but he bas the right to exact for such services charges that are reasonable and lawful. No act of the owner can deprive The attorneys interested in the the public of the not can the case are Shuman & Dean and Hayne to the deprived of his right except to the law of the land. The right of user is a trust which is impressed upon the railroad property itself.

> See also 19 A. & E. Ency, law 780 cott vs. Fon Du Lac Co. 16 Wall 78. R. R. Com'r. vs. P. & R. Co. Me) Am. R. 208. Sharpless vs. Mayor (Pa.) 59 A. Dec. 774. L.

Carolina, Knoxville & Western Rail- It is urged that, however, the doc-



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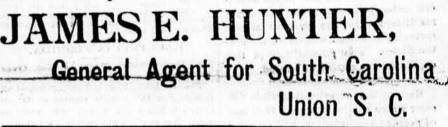
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for some reasons of their own would that under this section it becomes the decline to operate it. There is hard- duty of purchasers to form themly a town in the South that would selves into a corporation. But it is not suffer and property would decline clear that the neglect of this duty in value; business would dry up and cannot absolve them from the public ruin and disaster would be general. duty of operating the road. The Yet this would be the direct result statute was intended to protect the from the doctrine insisted upon by the public, and it will not be so construed respondent, that the purchaser of as to afford a purchaser of railrailroad property is bound to no pub- road property an escape to elude a lic duty. Railroads, irrespective of public duty. the question as to whose hands they We have thus seen that the right to may be in, are bound to public seroperate a railroad is a franchise and that the public is entitled to its exervice. "So overshadowing is this interest; cise by the owner. This is a public of the public that there must be no duty. The general rule is that where there is no other appropriate remedy, cessation even for a day in their operation;" Judge Simonton in Averill, mandamus is proper to compel the ex-Receiver vs. So. Rv. Co. et al. ercise of a franchise or the perform-From this use (which the public ance of a public duty. The right to has in the railroad) neither the cor- this remedy does not depend upon poration itself, nor any person, com- the character of the person (whether pany or corporation, deriving its corporate or individual) against whom title by purchase, either at voluntary it is asked. It depends rather upon or judicial sale, can divert it without the character of the duty to be perthe assent of the State. State vs. formed. A public officer who de-Dodge, City M. & T. R. Co. clines to exercise the functions of his (Kan.) 42 Am St. R 295. office will be compelled to do so by "But the public retain certain mandamus. In such a case, the manrights of vast consequence in the damus is asked against an individual, road and its appendages, which neibut the object is to compel the perther the company nor any creditor formance of a public duty. So here or mortgage can interfere, with the mandamus is asked against Jas-T. Williams as the owner of a rail-They take their rights subject to the road to compel him to perform a pubrights of the public and must be content to enjoy them in subordination lie duty. I think that mandamus thereto." Barton vs. Barber, 104 is the appropriate remedy. King vs. U. S., 135. In Metz vs. Buffalo C. Severen Wye Ry., 2 Bran. & Ald., 646. People vs. Albany R., 24 N. & R. R. Co. (N. Y.) 17 Am. R., 201. The railroad having been pur-Y., 261. Obio & M. R. Co. vs. Peochased by private persons, the cour ple; (III) 11 N. E, 349. State vs. held that they (the purchasers) "ac-N. E. R , 9 Rich., 247. People vs. quired the track, fixtures, rolling | C. & O. R. Co, N. E. R., 587. Brownstock, etc., together with the rights ell vs. Old Colony R. Co., 49 Am. or franchise of using it for the same St. R. purpose as the company was author-The respondant further claims that ized to use it, subject to the same the writ ought not to issue against luties to the public." him because of his financial inability It is further urged that the statto operate the road. It will be rentes of this State do not contemplate membered that he became the owner that railroads shall be operated by by his voluntary act, and thus became private persons, but only by corpo- bound to the performance of this pubrations; and reference is made to Gen | lie duty. One who voluntarily assum-Sts 610 et seq, providing the man- es an obligation cannot be relieved ner in which purchasers of railroad from it by the court. So long as the property may organize a corporation respondent retries the ownership of to operate the road. It is possible [CONTINUED ON EIGHTH PAGE ]

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# Graham & Sparks.

road and its property and franchises, respondent.

This is a proceeding to obtain a writ of mandamus against James T. Williams as owner of the Carolina, Knoxville and Western railroad, commanding him to operate the road. The said road is in Greenville county. The application for the rule was made by Judge Earle on September 4th. 1896. He issued a rule, but as he was was about to leave Greenville to hold court in the second circuit he made it returnable before me at Union, S. C.

The C., K. & W. R. Co., was corporation created by the act of legislature, and possessed power to condemn lands for rights of way ... It also possessed the right to receive aid from municipal taxation. The company was duly organized and re ceived large public aid in the form of township bonds. In the year 1889 a portion of the road from Greenville by the towns of Travelors Rest and Athens to the town of Marietta in Greenville county, a distance of 12 miles, was completed. It seems that this portion was received by the rail. road commissioners of the State, and that from the year 1889 it has been operated as a common carrier, In 1892 a suit was commenced in the United States court to foreclose a mortgage on the railroad and its franchises. In this suit, H. C. Beattie was appointed receiver, and under order of the court continued to operate the road. During the latter part of July 1896 the road was sold under decree of foreclosure and Jas. T Williams became the purchaser. He immediately ceased to operate the road and has declined to run any trains upon it for the accommodation , the public. Since the road was trade sold to individuals, who

ine of these cases may apply to railad property in the hand of the origal company, it has no application hen the road has been sold to a ird party under foreclosure proceedgs. This proposition is unsound. e railroad itself is a highway. The sement belonging to the public is

ithe road, and a trust is impressed on the property. These public nts attach to the property and in no asure depend upon a merely per sal contract of the original corpor at. While such company is bound tgercise the duties of a common caer this obligation arises by reason of relation to the road. The tr being impressed upon the prop-

equasses with it, and binds it in thands of all purchasers. It is a faur doctrine of the law thawher property affected by a trust is I the purchaser will be bound byt trust. By his own act he bibimself to a public duty, and so lon his relation of ownership contin so long will he be bound tthereise of this duty. The railroompany can mortgage or sell noter right than it possesses.

proposition that a purchaser of oad property may at his pleas urconvenience decline to operate it. e pregnant with much mischi the public. Railroads are estied thoroughfares upon whose cond operation the prosperity anginess of whole communities der They are the great arteries thr which flows the commerce of thed. To permit them to be clos would be to license the purcha inflict irreparable injury upon iblic. The point would be weltrated if the Southern railway its ten thousand miles of