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599-602, 603; Dec. Dig. § 135.\* 4 Va.-W. Va. Enc. Dig. 194; 14 Va.-W. Va. Enc. Dig. 200; 15 Va.-W. Va. Enc. Dig. 169.]

**6. Carriers (§ 135\*)—Carriage of Goods—Delivery by Carrier.**—If the carrier can sell perishable goods which the consignees refuse to receive, it should do so.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 557-559, 599-602, 603; Dec. Dig. § 135.\* 2 Va.-W. Va. Enc. Dig. 677; 14 Va.-W. Va. Enc. Dig. 188.]

**7. Carriers (§ 135\*)—Carriage of Goods—Injury to Goods.**—Where goods damaged in transportation become a total loss by failure of the consignees to receive them, the carrier is liable for the difference between the value of the goods, if delivered in a reasonable time, and their value on arrival at the place of destination, and is not relieved of all liability because the consignees failed in the performance of their duty.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 557-559, 599-602, 603; Dec. Dig. § 135.\* 4 Va.-W. Va. Enc. Dig. 194; 14 Va.-W. Va. Enc. Dig. 200; 15 Va.-W. Va. Enc. Dig. 169.]

Error to Circuit Court, Mathews County.

Action by R. L. Hudgins against the Baltimore, Chesapeake & Atlantic Railway Company. From a judgment for plaintiff, defendant brings error. Reversed.

*J. Boyd Scars*, of Mathews, and *J. W. Chinn, Jr.*, of Warsaw, for plaintiff in error.

*J. N. Stubbs*, of Woods Cross Roads, *J. R. Saunders*, and *Henley, Garnett & Hall*, of Richmond, for defendant in error.

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WHEELER et al. v. THOMAS et al.

THOMAS et al. v. WHEELER.

March 12, 1914.

[81 S. E. 51.]

**1. Appeal and Error (§ 747\*)—Cross-Appeals—Propriety.**—The bringing of separate appeals by the parties to a suit, each bringing up a part only of the record is not a proper practice, as the statute gives ample provision for bringing up so much of the record as is necessary to fairly present the whole case, and the appellee's right to assign cross-errors is safeguarded by rule 8 of the Supreme Court of Appeals (71 S. E. viii), which provides that, if error is perceived against any appellee, the court will consider the whole record as before them, and reverse the proceedings in whole or in part in the

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

same manner as they would do if the appellee brought the error before them by appeal, writ of error, or supersedeas, unless such error is waived.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3053-3056; Dec. Dig. § 747.\* 1 Va.-W. Va. Enc. Dig. 474.]

**2. Insane Persons (§ 71\*)—Sale of Property—Suits—Validity of Decree.**—Code 1904, § 2616, provides that, if the committee of any insane person thinks that the interest of such person will be promoted by the sale of his estate, or any estate in which he is interested with others, he may, for the purpose of obtaining such sale, file a bill in equity stating plainly all the estate, real and personal, belonging to such insane person, and all the facts calculated to show the propriety of the sale, and that the insane person shall be made a defendant. Section 2618 provides that a guardian ad litem shall be appointed for every insane defendant, and shall answer the bill on oath in proper person. Section 2619 provides that no deposition shall be read in the suit against any insane person, unless taken in the presence of the guardian ad litem, or upon interrogatories agreed on by him. Held that, where a suit brought to ratify the sale of real estate in which an insane person had a life estate was not brought by her committee, but by her next friend, the bill did not state plainly all the estate belonging to her, nor all the facts calculated to show the propriety of the sale, the insane person was not made a defendant, no guardian ad litem was appointed, and the case was heard on ex parte affidavits, the decree confirming the sale was void.

[Ed. Note.—For other cases, see Insane Persons, Cent. Dig. §§ 118-124; Dec. Dig. § 71.\* 7 Va.-W. Va. Enc. Dig. 687.]

**3. Insane Persons (§ 71\*)—Sale of Property—Suits—Validity of Decree.**—Code 1904, § 2433, provides, relative to suits for the sale of an estate given to any person by deed or will, with remainder or limitation over contingent upon any event, that no decree shall be made authorizing such sale, unless it shall be shown by the examination of witnesses that the interest of all persons directly or contingently interested in the estate will be promoted thereby. Section 2434 provides that, if there be an insane defendant, a guardian ad litem shall be appointed for every such defendant who shall answer the bill on oath. Section 2435 provides that no deposition shall be read against any insane party, unless taken in the presence of the guardian ad litem, or upon interrogatories agreed on by him. Section 2436b authorizes the sale of any estate given by deed or will to any person for life, with remainder to another, whether the remainderman be an infant or adult upon a bill filed by the person holding the estate for life, and provides that sections 2433, 2434, and 2435 shall apply to the

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

proceedings upon such bill. Held that, assuming that a suit by an insane person by her next friend for the sale of land in which she had a life estate could be maintained under section 2436b, the decree therein authorizing such sale was void, where the requirements of sections 2433, 2434, and 2435 were not complied with.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 118-124; Dec. Dig. § 71.\* 7 Va.-W. Va. Enc. Dig. 687.]

**4. Insane Persons (§ 94\*)—Actions—Suing by Next Friend.**—While ordinarily an insane person may sue in equity by next friend, a suit under Code 1904, § 2616, authorizing suits by the committee of any insane person to sell her estate, or any estate in which she is interested with others, must be brought by the committee, and not by a next friend.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 164, 165; Dec. Dig. § 94.\* 7 Va.-W. Va. Enc. Dig. 695; 14 Va.-W. Va. Enc. Dig. 560.]

**5. Judgment (§ 713\*)—Conclusiveness—Matters Concluded.**—Where, after a decree in a suit by an insane person's next friend to ratify a sale of real estate in which the insane person had a life estate, ejectment actions were brought in the name of the insane person by her next friend against subsequent purchasers of the land, in which the court, on the evidence and an agreed statement of facts, rendered judgment for each defendant, such judgments standing unreversed, however erroneous, were conclusive on the parties to the actions and their privies as to the validity of the proceedings in the suit to ratify the sale, the decree ratifying it, and the deeds executed in pursuance thereof.

[Ed. Note.—For other cases, see *Judgment*, Cent. Dig. §§ 1063, 1066, 1099, 1234-1237, 1239, 1241, 1247; Dec. Dig. § 713.\* 6 Va.-W. Va. Enc. Dig. 341; 14 Va.-W. Va. Enc. Dig. 466; 15 Va.-W. Va. Enc. Dig. 419.]

Appeal from Circuit Court, Prince William County.

Suit by Alma Thomas and others against William M. Wheeler and others. From the decree, defendants appeal, and, from a part thereof, the complainants also appeal. Affirmed in part, and reversed in part.

THOMAS & CROSS *v.* BROWN.

March 12, 1914.

[81 S. E. 56.]

**Accord and Satisfaction (§ 12\*)—Payment of Part—Coercion—Statutes—Construction.**—Code 1904, § 2858, provides that part per-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.