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Grand Jury Has Outlived Usefulness, Judge Sink Says

ESTIMATES COST TO TAXPAYERS \$600,000 YEARLY

Says Ninety-Five Percent of Bills Returned Are Those Handled First by Other Agencies

The grand jury system of North Carolina has outlived its usefulness, Judge H. Hoyle Sink, of Asheville, told the court in his charge to the grand jury of Cherokee Superior Court, which opened here Monday, August 8th, for a two weeks term. Judge Sink stated that he had known of only one instance in his experience where the grand jury was "worth a hill of beans," as about ninety-five percent of the work of this body was now being done for them, or had already been performed once and sometimes twice before it reached that body.

Judge Sink stated that he had suggested to the Legislature that the grand jury system in North Carolina be abolished, except in instances where one might be called by the resident judge, the circuit judge, or the governor in cases of riot or extensive community trouble.

These grand juries are costing the taxpayers of North Carolina about \$600,000 a year, Judge Sink estimates, and the work they do could easily be done by the solicitor or magistrates, as these officers perform the work before it goes to the grand jury, and this amount saved to the taxpayers of the state.

These remarks were made by Judge Sink in course of his charge to the grand jury last Monday on the opening of court, and many of those who heard his charge have expressed a desire to see it in print so they could read and digest more in detail, and through the courtesy of Miss Hattie Axley, court reporter, The Scout is enabled to reproduce the remarks of Judge Sink here. The charge to the grand jury follows in full:

Mr. Foreman, and Gentlemen of the Grand Jury, I am not going to charge you generally, but there are a few things, however, that I wish to call your attention to, the first of which is the examination into the records of the magistrates, guardians and administrators, and any other parties who have the custody of the property or person of others. The Clerk can give you a list of the names of all the guardians that have filed reports, and the administrators and executors who have filed their reports and those who have not. The law requires specific reports from these people, and if they have not been filed, I want you to find out why they have not been filed.

The law requires that all fines and forfeitures in magistrates courts be reported, and I find in a great many counties magistrates never make any report. I find other instances that magistrates are running collection agencies. A magistrate has no authority in law to make collections; he has no authority to write a man a letter and demand the payment of an account and then to issue a summons. For him to do so is a violation of the law. In many instances the magistrates are actually employed by a great many houses to collect their accounts. The magistrates will write a man a letter, a dun, for the money, and if he does not pay it, he will issue a summons and swear out a warrant for the debtor and let him come in and pay up the costs of the warrant, and pay the account, and pay the magistrates fees and then discharge him. Now, if there is any magistrate in your county who is doing things of that kind, just file a presentment against him, and I promise you that there will not be a repetition of it by that magistrate for some time at least.

The magistrates represent that strata of the judiciary between the Superior Court and the public. They deal principally with poor people, in my section largely with negroes, but their contracts, their official duties are confined very largely to unfortunate and ignorant folk. A man is indicted because he had not a check of \$2.50, or a \$25.00 debt, or because he has not paid an account on a talking machine he has ordered from some one in Chicago, Illinois, and he comes before a magistrate, often comes without an attorney, usually comes without an attorney, and if he can pay the account, the magistrate will tell him if he will pay the bill that will be the end of it. That is violation of the law.

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OLMSTED IS COMPLETING NEW NOVEL

"Homespun" Is Title, and Is Laid In Cherokee and Graham Counties and Chattanooga

Stanley Olmsted is completing a novel begun in Murphy last December and worked upon, at intervals, since then. He says the new book was at last all done "in the raw" last Friday, August 12th, on which day he underwent a levitation "aerial" and resilient, all the creative work on it behind me, all of it at last lifted out of me and off me."

He says furthermore: "Another month of drudgery for many hours every day, and no Sundays, is ahead of me. But this may be likened to the kneading of dough already mixed in the pan, setting the dough to rise; and the final typing like the neat baked loaf from the oven!"

The title of the novel is HOMESPUN. Covering some 35 years in four main episodes, it is laid in Braxton, out from Murphy; in a Graham County lumber camp; in the oldest Murphy hotel; and in Chattanooga. The book will bear the motto—

Raw be the hands that stroke
For warp and woof, rustle the thrust
Of axe-hewed loom.

A previous novel by this author was identified with Murphy by its publisher, Lincoln MacVeagh, The Dial Press, New York City. Mr. Olmsted has always insisted, however, that he aimed merely at getting the generic spirit of any mountain county-seat, before the coming of the railroads in the eighties, and that no character in it is anybody's portrait. These characters, he says, are composite; crystallizations of types repeated anywhere, around any country-side, in Hayesville, or Robbinsville, or Bryson City, or Franklin, exactly as in Murphy. Like Thomas Wolfe, author of "Look Homeward, Angel," he points out that the universality of human nature can only be distilled from specific instances familiar to the observer, the "child among ye takin' notes."

This earlier Olmsted book, "At Top of Tobin," is now prescribed in the fiction courses of several universities, as a durable and permanent study of American life, and is often alluded to by lecturers of literary lyciums.

The sesame for the new novel was given him by Mrs. Nettie Dickey, some years ago. Mr. Olmsted says, when she recounted with great vividness the life of a domestic in her hotel, and the bringing up of the woman's illegitimate baby in a pen, built to keep the child from falling in the kitchen fire. He waited to write it until such time as he might get the entire saturation by living once again in Murphy as he had in early childhood.

Thomas Wolfe, the Ashevillean who attained international fame with his first book, at the turn of his thirtieth year, has written Mr. Olmsted that he hopes to join him in Murphy in the Fall for a few days of the woods and heights about Hooper's Bald, one of the few mountain fastnesses still left inviolate, because no motor car can get there. He has also written Mrs. Dickey accepting her invitation to be her guest at her hotel, when he shall have finished the first book of his coming "October Fair" saga, for Fall publication by Scribner's.

Mr. Wolfe was awarded the Guggenheim Fellowship, for his titanic study of "Altamont," identified with Asheville. He returned home from the life abroad made possible by this money, and a month ago won the \$5000 prize awarded by Scribner's Magazine for the best American short novel submitted. Among 1500 manuscripts, Mr. Wolfe tied for the prize along with John Herrman, so five thousand dollars was paid to both of them. "Look Homeward, Angel" is now being translated into four languages of old Europe, thus vindicating its universality, the fitting of its types to any culture or clime.

Of lesser scope and far less dynamic drive than the "Altamont" book, Mr. Olmsted's "Tobin" book remains its sole forerunner, in any way allied, in all American literature, and was published some four or five years earlier.

Central Asia Drying Up

Central Asia is becoming more and more arid, and the Gobi desert is advancing steadily into northern China.

COURT ENDS SESSION HERE ON TUESDAY

Judge Sink Imposes Sentences Ranging From Ten Days to Fifteen Years

Cherokee County Superior Court ended here Tuesday afternoon at the end of the second week of a two weeks scheduled term.

The first week was taken up entirely with the disposal of the criminal docket, and the civil docket was taken up Monday morning and all cases ready for trial disposed of during the two days, while most of the cases were continued until the next term of court. It was expected that the Cherokee bank case, a civil suit, would consume several days, but this case was continued because of new developments arising through the report of the grand jury.

Judge H. Hoyle Sink, of Asheville, who presided over the term, handed down sentences ranging from ten days to fifteen years. A number of the prisoners were carried off Sunday by the state patrol bus to work on the roads, assigned to the state road camp at Hazelwood, while others were carried off by the sheriff's department to State's Prison, Raleigh, Monday. There are several others to be carried off the latter part of this week.

Those in jail Tuesday morning were as follows:

Con Chastain, of Letitia, given from four to seven years for breaking in the Graham store and post-office at Letitia. He will be transferred (Continued on page 12)

SON OF TENN. SHERIFF HELD ON \$500 BOND

Clifford Crowe Charged With Manufacturing and Possession and Carrying Concealed Weapon

Clifford Crowe, son of Tom Crowe, high sheriff of Monroe County, Tenn., is being held in the Cherokee County jail in default of a \$500 bond, charged with manufacturing and possession of whiskey, and carrying a concealed weapon.

Young Crowe was captured while working at a still about a mile and a half west of Letitia Tuesday of this week by Cherokee county officers who raided and destroyed one of the most complete outfits ever located in this county. Officers stated they had seen larger outfits, but none more complete in every detail.

The still was a fifty gallon outfit, and officers said the place evidently had been in operation from four to six months. The operators had their beds, cots, rations, cooking utensils, sleeping quarters, shacks, and all necessary equipment for living and manufacturing on the ground. They destroyed everything, including about 900 gallons of beer, two boxes of which were ready for distilling and would probably have been "run" on Tuesday night.

Officers taking part in the raid were Deputies George Lovingood, Gilbert Stiles, Jack McMillan and Bud Morrow.

At a preliminary hearing Wednesday morning, young Crowe was bound over to superior court under \$500 bond, and in default of which he was remanded to jail.

J. PAUL KEENER DIES AT TOMOTLA

J. Paul Keener, son of prominent farmer and marble man, J. S. Keener of Tomotla, died last Thursday following an illness of several weeks. About a month ago he underwent an operation for appendicitis, and it developed that he had some sort of stomach trouble, which complications caused his death. He was 5 years 11 months and 10 days old.

Funeral services were held at the Tomotla church last Friday by Rev. T. F. Higgins, pastor of the Murphy Methodist church, and the Rev. Johnny Carper, pastor of the Murphy circuit. Interment was in the churchyard with F. W. Higgins, local funeral director, in charge.

He is survived by his father and mother, two brothers and a sister, Fred, Henry and Blanche Keener, all of Tomotla.

CIVIL ACTION SEEKS RECOVERY OF TAX MONEY

Suit Started By Town Against Former Clerk, Tax Collector, Mayor And Bondsmen for \$8,000.00

Grand Jury Returns Bill Against Fain

It is understood the grand jury last week returned a true bill against F. A. (Toby) Fain, former chief of police and tax collector for the town of Murphy, in connection with shortage of tax monies alleged to have been collected by him and converted to his own use.

Several weeks ago, the Town of Murphy, through its attorneys, Don Witherspoon and Fred O. Christopher, started civil action in the superior court to recover approximately eight thousand dollars from H. A. Fain, and F. A. Fain, brothers, the former clerk and treasurer of the town and the latter chief of police and tax collector, up until the first of last May when a new mayor and board of commissioners took over the reins of government and made changes in personnel.

The civil action also made The American Indemnity Company, bondsmen for H. A. Fain; S. W. Lovingood, former mayor; R. R. Beal, J. W. McMillan and C. B. Hill, bondsmen for F. A. Fain; and Mrs. Evelyn Hill Fain, wife of F. A. Fain, defendants in the action.

The complaint in the civil action alleges that the two defendants, H. A. Fain and F. A. Fain, "mixed, confused and clouded the records in respect to the trust moneys in their hands," and that the records kept by them did not show the true conditions of their accounts.

It further charges: "That the defendants, especially the defendant F. A. Fain, have taken, embezzled and fraudulently converted to their own use, of the moneys collected for taxes, a large sum of money, amounting to at least the sum of eight thousand dollars, if not more," and in order to ascertain the exact amount of such shortage, asks for an accounting by order of the court.

The complaint also alleges that F. A. Fain converted \$3,600 of the tax funds to his own use and purchased \$10,000.00 of the Town of Murphy bonds, paying \$3,600 for the bonds because of the depreciation of the market value. A receiver is asked to be appointed by the court for these bonds, to hold them until the final settling of the suit, on the allegation that the defendant, F. A. Fain, is insolvent, and is attempting to dispose of them.

Mrs. Evelyn Hill Fain, wife of F. A. Fain, was brought into the action as a defendant by virtue of the fact that she was owner of the lot on which a handsome residence has been erected, and which it is alleged in the complaint, was constructed with a part of the tax money. The exact amount is not known, but the complaint alleges at least several thousand dollars, and the plaintiff claims it is entitled to follow such funds so converted and used in the construction of the residence.

S. W. Lovingood, Mayor under the former regime, was brought into the action as a defendant because of allegedly having accepted bond of \$2,000 without the consent and approval of the board of town commissioners, for F. A. Fain, as tax collector, when the board by resolution ordered the bond justified in the sum of \$5,000, the complaint charging that he, H. A. and F. A. Fain, together conspired to evade the provision of the law and the charter of the town of Murphy.

Answers Filed

S. W. Lovingood, in his answer, denied all allegations with reference to an unlawful conspiracy, that such is not true and is denied. He further sets out that in addition to the \$2,000 bond furnished by F. A. Fain, with R. R. Beal, J. W. McMillan and C. B. Hill, as sureties, an additional bond in the sum of Two thousand dollars was furnished by Fain as chief of police and tax collector, signed by A. McD. Harshaw, W. M. Ramsey, and J. W. McMillan as sureties, and that when he went out of office on May 5th, he turned over this bond to the present mayor and

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HITS HUSBAND WITH FOOT ADZ, IS HELD IN JAIL

Mrs. Lilly Reese Being Held Without Bond Pending Outcome of Victim, T. N. Reese

Mrs. Lilly Reese, about 25 years old, of the Maltby section is being held in the Cherokee County jail without bond, charged with striking her husband, T. N. (Tom) Reese, about 65 years old, on the head with a foot adz or shoe last. Reese is in the hospital at Franklin and is said not to be expected to live, suffering with a fracture of the skull.

The family fracas happened last week, and officers said they were told that Reese was beating his wife with a stick when she ran up the stairs and he followed her. She turned at the top, seized something and struck him several times, but failed to stop him. She then seized the foot adz and struck him on the head with it, whereupon he sank to his knees, rolled down the stairs and lapsed into unconsciousness.

He was carried last Sunday to the hospital at Franklin where it is said his condition is serious and he is not expected to live. Mrs. Reese was taken into custody by Deputy Sheriff Gilbert Stiles and lodged in jail where she is being held without bond pending the outcome of her husband's condition.

The Deeses have three children, one 12 years old, one 6 and one 4, and another one is expected in a few months.

TRUE BILLS RETURNED IN BANK CASE

Civil Suit Continued Until Criminal Charges Against Bank Officials Have Been Determined

The grand jury last week returned true bills against E. A. Davidson, president; J. B. Storey, cashier; and J. W. Davidson, director and member of the loan committee, of the defunct Cherokee Bank, which closed its doors in October, 1931.

Just what the true bills charged was not learned. However, the court made an order continuing the civil suit of the banking commissioner, Gurney P. Hood, against E. A. A. Davidson and others until the criminal charges against the bankers were disposed of.

The order of the court follows:

The defendant, E. A. Davidson, upon the calling of the civil docket at the regular August term moves for a continuance on the ground that at this term of the court the grand jury returned a number of bills of indictment against the defendant in this cause alleging that said defendant committed various violations of the criminal statutes in his capacity as an official of the Cherokee Bank and it having been made to appear to the court that a number of the transactions referred to in the criminal indictments as shown by the bills were in litigation in the civil action, the court upon its own motion stated that while in the District this court would not try the civil actions until the criminal actions had been determined, being of the opinion that in the interest of justice to all parties concerned the criminal actions should be first determined which motion was resisted by the plaintiff's attorneys and which ruling was made after the arguments of the plaintiff's counsel.

Whereupon the case is continued without prejudice to either party.

After the discussion the defendant's counsel moves the court for a reference which motion was continued pending the determination of the criminal actions against the same defendants upon bills found at the present term of this court.

To the rulings upon both motions, plaintiff's attorneys in apt time except.

The Ancient

"It is well," said Hi Ho, the sage of Chinatown, "to restrain our admiration of what is ancient. In an old quarrel there is neither dignity nor advantage."—Washington Star.