

## CHIEF JUSTICE CLARK'S OPINION

Opinion Written by Chief Justice Walter Clark in the Ahoskie Graded School Controversy.

The opinion by Chief Justice Clark is as follows: This is not a quo warranto to try the title to office but an injunction which was temporarily granted, to strain intruders from exercising certain duties when upon unquestioned facts they were acting without authority.

The Ahoskie school district had six trustees. On May 7, 1917, an election was had for three members of the said Board. The incumbents candidates for re-election, were defeated and three new members elected. The regular day for the session of the Board at which the new members should have appeared to take their seats was the first Tuesday in June following i. e. June 5. But three of the old board, C. G. Powell, J. A. Williams, and M. D. Gatling (the last two of whom had been defeated of re-election) met in session on May 21, without notice to the newly elected trustee, and assuming themselves to be the board and without notice to him declared vacant the place of one of the absent members (A. E. Garrett) and assumed to elect in his place one A. B. Cowan and then again on May 25 they met with Cowan present and declared vacant the place of another absentee, L. T. Sumner, and elected to fill the same J. R. Garrett and subsequently upon the resignation of A. B. Cowan they elected M. D. Gatling (who had been defeated at the election) in his place. On the first Tuesday in June, Powell (one of the three) J. R. Garrett and A. B. Cowan both of whom had been elected as above set out without authority, met with said Gatling and declared the office of W. L. Curtis, one of the newly elected members, vacant because he had not qualified and appointed J. A. Williams (who had also been defeated at the election) in his place and then invited the other two newly elected members to sit with them which was declined.

This was an injunction brought by P. H. Mitchell and W. W. Rogers, two of the new members elected on 7th of May, asking an injunction against C. G. Powell, one of the old members, and his three associates, who had all been illegally chosen in the ingenious manner just narrated, as intruders, from taking possession of the school building and property and interfering with the management of the school.

A temporary restraining order was granted by Kerr J. 28th July, 1917, returnable before Wheedbee J. 14 August 1917 when it was dissolved and the plaintiffs appealed.

It is apparent from this summary that the defendants were usurpers and should have been restrained until there was a legal meeting of a majority of the board.

The defendants' right to exercise any authority depended entirely upon the validity of that meeting on 21st of May. That meeting was an absolute nullity because, in the best view for the defendants there were only three members present which is not a majority of six, Cotton Mills v. Commrs. 108 N. C. 678 Rev. 2331 (2); and furthermore it was not held at their regular time, the first Tuesday in June, Moore v. Commrs. 115 N. C. 128. The action in declaring the seat of one of the absent members vacant and attempting to fill it was a nullity for three members out of six had no authority to take this or any other action, and consequently the subsequent meeting of these three men with the substitute, chosen by them on 21st of May, and all their subsequent conduct which reinstated two of the very men the people had put out is invalid because it is all based upon the meeting of the 21st of May which was itself a nullity.

We do not know and it is immaterial, what was the issue at the election on May 6th. But we do know that three members of the old board were defeated for re-election and that three new members were elected in their stead, and yet two of the men defeated by the people kept the new members out until they reinstated themselves. Under a government that rests upon the consent of the governed, the voice of the people whether in a school district or a township or a State or nation, legally expressed, should govern. It matters not that this is only a school district. The methods herein attempted to set aside the duly expressed will of the people in this school district if attempted on a larger scale would be serious consequence. Of the three men who met on the 21st of May only one had a legal title to the office for the other two were violating the Constitution Art. XIV Sec. 7 by holding at the same time other offices, and besides had been defeated of re-election. But if it be conceded, that they were all three prima facie trustees of the school on May 21, they were not a majority of six and their conduct in vacating the office of an absent member and electing a substitute was without color of authority and all subsequent action is vitiated thereby. Water cannot rise above its source and as the meeting on 21st of May was invalid no subsequent action dating back to that meeting has any validity. The courts should give no countenance to such disregard of the public will and to the conduct thus resorted to to set it aside. The court should have continued the injunction and should have issued a mandatory injunction that the two newly elected members of the board (the other one of them not having accepted) and Powell, who was the only one of the old board, not defeated, and who alone was not holding another office in violation of the Constitution, should meet and organize. As there were then only three legal members of the board (two of the plaintiffs and Powell) they would have been the entire board and these three could have legally filled vacancies till next election. The argument of defendants appealing to technicalities based upon this being a quo warranto is simply the traditional red herring drawn across the trail to divert attention from the real issue. We were told in the argument by counsel on both sides that a quo warranto is pending in the court below to decide the title, and pending such decision the court should have continued the injunction with a mandatory order for the three valid members, as above stated, to hold a meeting and conduct the school until the quo warranto is decided. Tise v. Whitaker 144 N. C. 507. Nothing is more to be reprehended than conduct designed to set aside and thwart the public will whether this is done by force, by fraud, or by finesse. A loyal observance of the declaration of the people at the ballot box is the first duty of every citizen under our form of government. (Paid advertisement)

### Executor's Notice

Having qualified as executors of the estate of George T. Darden, deceased, late of Hertford County, North Carolina, this is to notify all persons holding claims against said estate to present same to us, duly verified according to law, on or before the 17th day of November, 1918, or this notice will be pleaded in bar of their recovery. All persons indebted to said estate will please make immediate payment to us or either of us. This November 17, 1917. Ralph Darden, Elkins, W. Va. Uriah Vaughan, Murfreesboro, N. C. Winborne & Winborne, attorneys.

### What is LAX-FOS

LAX-FOS is an improved Cascara. A D. Digestive Liquid Laxative, Cathartic and Laxative. Also Contains Cascara Bark, Blue Mass, and other valuable Remedies. It is a safe, reliable, and effective remedy for all cases of constipation, biliousness, headache, and all other ailments arising from indigestion and irregular bowels. It is sold in all drug stores.

## THE PRESS AND THE TREASURY.

(Publicity Bureau Treasury Department.)

Since the United States entered the war thousands of patriotic Americans have volunteered their services to the Government. Some volunteered their services to the Army, some in the Navy, and some in various civil employments. In addition, many in the two Liberty Loan campaigns and in other great national measures have devoted and are devoting all or part of their time at a nominal compensation, to the service of their country.

If ever a list is made of these American citizens who have volunteered their services to their country at war it will be found that no calling, profession, or business can show a higher percentage (if any can be shown so high) as that of the press of the Nation. The large city dailies, with their tremendous circulations, and the small local weeklies that penetrate the humblest homes of the dwellers in villages and on farms alike have devoted their talents, energies, and space to their Government.

The loyal foreign-language papers have been as generously patriotic as the others and have preached Americanism and duty in thirty-six different languages.

In the Second Liberty Loan campaign, as in the First, the newspapers of the country have shown their unselfish patriotism, and the splendid results in each campaign are in a great measure evidence of their power and influence.

Many millions of American newspaper readers are now bondholders of their Government, a great number made so through the influence of the newspapers they read. They are interested as never before, and in a more direct, personal way, in governmental matters, and especially in the finances of their government.

### Ahoskie Baptist Church.

Saturday, November 24th will be the regular Conference day for the Ahoskie Baptist church and it is very important that a definite understanding be reached as to whether the church shall call a man for all his time or that the field remain as it now is. We feel that a majority of the church membership should act upon this matter as well as to set some definite amount to be paid a pastor. Until these matters are passed upon your committee cannot act further in securing a pastor. This is a matter in which the sisters of the church should and we believe are very much interested, and we earnestly request their presence at the conference next Saturday as well as all the brethren. Brethren please arrange your business so as to attend this conference, as it is very important that you be present. C. G. Powell, C. C. Hoggard, W. H. Miller, Pulpit Committee.

### Red Cross Work at Union.

The ladies of Union invited Mrs. Thomas B. Wynn, Chairman of the County Red Cross Chapter, to come to Union Saturday afternoon, Nov. 17, to organize a branch of the Red Cross. Mrs. Wynn being unable to go, she asked Mrs. John E. Vann, Chairman of the Winton Auxiliary, to go in her place.

After Mrs. Vann had explained the Red Cross work, the Union Branch was organized with the following officers: Mrs. Annie Sears, Chairman; Mrs. Effie Darden, Vice-Chairman; Mrs. Arthur Miller, Sec.; Mrs. J. Claxton Brett, Treasurer; Soliciting Committee, Mrs. Archie Brown and Miss Mae Taylor; Membership Committee, Mrs. Herbert Brown and Mrs. W. J. Vaughan.

We bespeak for the Union branch a splendid work. They have already ordered the patterns and material to begin work. Each woman present seemed enthusiastic and anxious to get to work. Seventeen members were enrolled Saturday afternoon. - Reported.

## WINTON WAVELETT

The first rally of the Y. M. C. A. War Fund was held in the Baptist Church here Sunday night with Hober Vann, Chairman of the Y. M. C. A. work in Hertford County, in charge. The congregation was very much disappointed when it was learned that there would not be an enlisted man to speak. The committee did its best to secure a man in the uniform to come. However appropriate remarks were made by W. D. Boone, Chairman of the Winton township, Prof. N. W. Britton, and Jno. E. Vann. No collection was taken and no pledges asked for as the financial part will be worked by the local committee in each township.

The Y. W. A. of the Baptist church had a most interesting meeting with Miss Royster Friday night, Nov. 16. The subject was the work of the Y. W. C. A. Splendid papers were read by the girls on what the Y. W. C. A. is doing for the city girl, the country girl, the immigrant, the student, and the war relief fund. Miss Royster gave a glorious account of a Y. W. C. A. Conference she attended last summer at Ridgecrest. Miss Kate Taylor played a pretty piano selection and Miss Emily Clark sang 'Ave Maria' which was very much enjoyed. The Y. W. A. sent \$10 for State Missions. The next meeting will be with Miss Emily Clark.

The work of the Red Cross is growing in interest each week. Goods are being ordered by the bolt. The yarn has come and was all given out at the first meeting after it came and members were begging for more. Another shipment is expected in a short time. The war is coming so close to many that the women even in small communities feel that they must do all in their power to help relieve and comfort the suffering.

There was a most enthusiastic meeting of the Red Cross Chapter of Hertford County at Murfreesboro Wednesday afternoon, Nov. 14. Despite the cold and rain, there was a good attendance, three townships being well represented. Reports full of interest and information were made by Mrs. Jno. E. Vann and Mrs. Thomas Wynn of the Red Cross meeting in Raleigh. Reports were also made by the secretaries of the different branches. The only discouraging feature of the meeting was the resignation of the County Chairman, Mrs. Wynn. It will be difficult to find one to take her place, for she is so enthusiastic and capable. She will serve until after the next meeting which will be held in Winton Wednesday, Jan. 9, 1918 at 2 o'clock.

Mrs. W. J. Rhodes and son, Rowland, of Washington, are spending a month with Mrs. Rhodes daughter, Mrs. W. M. Eley.

Misses Ina Mitchell and Helene Northcott, and Messrs. J. R. and W. Mills Jordan spent Tuesday night and Wednesday in Norfolk.

Prof. N. W. Britton, Misses Esther Royster, Susie Shaw, Eva Watford and Bert Matthews attended the teachers meeting in Ahoskie last Friday.

Mr. C. S. Vann, of Edenton, was in town one day the past week.

### "The Obstruction" Comes Down.

The wire fence that has enclosed the contested strip of land beside the Coast Line Railroad at Ahoskie was removed from its posts, and the post taken up on Monday. This land has been enclosed for two years and more during which time it has developed a good harvest of weeds. This land is now open for the use of the public, and no doubt the weeds will soon be trampled under foot of man and beast in the free enjoyment of an easement granted by the Superior Court of Hertford County.

The Quinine That Does Not Affect the Head Because of its tonic and laxative effect, LAXATIVE BICHOLO QUININE is better than ordinary Quinine and does not cause nervousness or ringing in head. Remember the full name and look for the signature of W. W. GROVE, M. D.



## The Bank of Winton Winton, N. C.

Why We are Thankful Answered by the Following Comparative Statement:

November 20th, 1913	\$21,767.01	\$13,050.07
November 20th, 1914	\$36,626.26	\$19,972.14
November 20th, 1915	\$37,179.60	\$25,350.73
November 20th, 1916	\$50,021.90	\$33,621.94
November 20th, 1917	\$113,744.88	\$68,383.49

To Every One Of Our Patrons We Are Thankful.

This is the season of thanks, and if we have been of service to you, tell others about it.

HELP US MAKE THIS BANK the strongly fortified, well entrenched, BIG BANK that our SERVICE WARRANTS.

Four Per Cent Compounded Quarterly on Time Deposits.



Hertford County's Treasurer.



## GIFTS for CHRISTMAS Are Arriving Every Day.

This Store Began Early to Provide PRACTICAL GIFTS for its Customers, and we are Strongly Fortified in This Line.

SPECIAL ATTENTION was given to the selection of Useful Gifts for any member of the family—GIVE SOMETHING THAT IS USEFUL.

Christmas is NEARBY, but the time for selecting the choice gift is HERE AT HAND.

We are also headquarters for the best Hot and Cold Drinks in town all the time.

Hurry along to



Z. U. Bellamy = = = Ahoskie, N. C.