

THE FRANKLIN TIMES

A. F. JOHNSON, Editor and Manager

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It has been charged that the editor of the TIMES is not a citizen of Louisburg. His town taxes is around \$140 per year. He pays the price the same as others.

If you have an employee to do certain work and he don't do it, is it economy to replace him with some one who will do the work or employ an additional person to do it at extra pay.

Automobilist will read with much interest and concern the announcement of the strict enforcement of the automobile laws by Mayor Joyner and Chief Meadows in another column. This is the right step in the right direction.

Wake County Commissioners will not agree to Gov. Morrison's appeal to do away with the lash in the Convict camp. We see no reason why convict camps should be made havens of rest and pleasure for the evil doers at the expense of the public.

Since the citizens of Louisburg have to pay a good price for lights and water and taxes, and since the Commissioners have provided another man to assist in the collection, why shouldn't they be required to call on the customers like the town requires its creditors to call on it.

No doubt the sixty-seven suits against the Co-operative Associations from Pitt County will be watched with interest by many. Those thoroughly loyal however will lose no sleep over the matter as they believe the Associations are right, both in principle and practice, and will be upheld in Court.

The information that Judge John M. Kerr, of Warrenton, will be an aspirant for Congress to succeed the late Hon. Claude Kitchin is received here with much pleasure and with much regret. We are glad to know that such a capable gentleman is allowing himself to be put forward for this important position and we feel satisfied that he will take up the work and press on to the goal with fitting honors after such a successful, efficient and much appreciated predecessor. The only regret that we have is that we had hoped he would enter the race for the Governorship of North Carolina and become our next Governor. Judge Kerr is the right man to succeed Hon. Claude Kitchin and his district will do itself honor to give to him a unanimous vote.

The decision of Hon. John Sprunt Hill to approve the Creedmoore route from Oxford to Durham instead of the Stem route is to be commended as an exceptional business decision that will take nothing from the section served by the Stem route and add all to the territory served by the Creedmoore route. The position of the advocates of the Stem route, in asking the Commission to tear up and do away with an already good road just to get the Highway to locate a state road in its stead, when there is another section without roads and a good road is a necessity, appears to be unfriendly, inconsiderate and certainly extravagant and without the exercise of the otherwise good business judgment these gentlemen usually use. Mr. Hill is right in his decision, which will not only give the people of Granville and Durham counties an additional road, and will be the means of saving the investment already made in the good road by Stem, but will give an outlet to the people in eastern North Carolina to the West at a saving of around thirty miles. Connection from the highway by Louisburg and Franklinton can be made over Franklinton townships good roads and a short stretch in Granville, making a big saving to those who wish to travel that way. The Highway Commission should stand pat with Mr. Hill.

NO MALICE

We know it is useless for us to state to the general public that we were prompted in our editorial last week concerning certain actions of the Town Commissioners of Louisburg by no malicious or improper motive whatever, but to those who saw it to criticize us in that light we would say that there is not a member of the City Administration that we have not the very best personal feelings for and with whom we are especially friendly. However, for the benefit of those who see it differently, we will state we are running a newspaper and one of the greatest and most important duties of any newspaper is to criticize anything in the interest of the public. Our criticisms of the acts of local officers is for two purposes. First we feel that most any set of men in this country want to do what is right and in accordance with law, and to these it is only a matter

Mother of Three, Honor Barnard Graduate



Katherine Barnard Clay, of Newark, N. J., has just received the A. B. degree at Barnard College and is shown in graduation regalia. She is accompanied by her three children: John, Richard and Katherine.

of calling their attention to the irregularity that they may correct it before it brings about embarrassment. Second if the persons in charge are determined to do as they please regardless of law and right, it is our purpose to show up their acts that the public and the Courts may take a hand in the public interests. It is often very embarrassing to us to have to criticize, owing to the fact that it involves some of our closest friends. But when we consider it our duty to do so we recognize neither positions social or financial. We propose to pursue our course in what we think is right. If in doing so we should mistreat any one we will gladly make corrections, if the matter is called to our attention. We want to be square with everybody, but our first duty is to the public.

SUPREME COURT SAYS NO

The following case State vs. Eugene Williams, was appealed from a decision of Judge Furgurson, from Craven county and filed the 21st day of September, 1910. It cites the act, which is now Section 4388 in the Revised. The records Volume 153 N. C. reports reads: This is an indictment under sec. 3572 now 4388 of Revised C. S. as follows: "If any person, appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested, shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor." There was a special verdict at March Term, 1910, of the Superior Court of Craven County, his Honor, Judge Furgurson, presiding.

SPECIAL VERDICT

The jurors being duly sworn and empaneled to try the issue between the State and defendant, Eugene Williams, finds the following special verdict, to-wit:

- 1. At the times hereinafter named the defendant, Eugene Williams, was a member of the board of aldermen of the city of New Bern.
2. At said times H. P. Willis was the practical engineer in charge of the machinery supplying electric light and water to the city of New Bern, which plant was owned by the city of New Bern.
3. That Thomas F. McCarthy was at said times the chairman of the committee of the board of aldermen of the city of New Bern having supervision of said electric light and water plant.
4. That during the month of July said H. P. Willis, by authority of said Thomas F. McCarthy, sent an order to the New Bern Iron Works, Inc., for supplies necessary for the operation of said plant amounting to \$75.63, a portion of which manufactured to order and could be manufactured and supplied by no other concern in or near the city of New Bern except by the New Bern Iron Works, Inc.
5. That at the times hereinafter mentioned said Eugene Williams had purchased of W. A. McIntosh stock in the New Bern Iron Works, Inc., on credit and had hypothecated said stock to W. A. McIntosh for the purchase money thereof, but received profits whenever any were declared and that in said bill furnished the city a profit was charged.
6. That said Eugene Williams was a director and president of the company, but his duties in connection with the company were simply to act as head of the mechanical department of the shop.
7. That W. A. McIntosh owned part of the stock of the corporation and held all the balance of the stock as collateral security and was the general manager of the company, and had full control and direction of its business, and C. M. Kehoe was bookkeeper of said company, and was under the direction and control of W. A. McIntosh.
8. That at the August meeting, 1909 of the board of aldermen of the city of New Bern, C. M. Kehoe, said bookkeeper by the direction of W. A. McIntosh, presented said bill for supplies to the clerk of the board, who passed the same, which had already been approved by Thomas F. McCarthy, chairman of the water and light committee, to H. M. Groves, chairman of the finance committee, and said H. M. Groves approved the same.
9. That said bill so approved was presented to the board of aldermen, and said Eugene Williams being present at the meeting requested the board to excuse him from voting, and he was excused by the board, and the remaining members of the board approved the bill and issued an order therefor which has not yet been paid.
10. That said Eugene Williams has had nothing else to do with the transaction except as hereinafter set out, neither as an officer or stockholder of the New Bern Iron Works, Inc.,

nor as an alderman of the city of New Bern, and he has had no corrupt intention in connection with the matter.

If upon the foregoing facts the court is of the opinion that the defendant is guilty, the jury finds him guilty; and if upon said facts the court is of the opinion that the defendant is not guilty, the jury finds him not guilty.

The court being of opinion upon special verdict so found by the jury that the defendant is guilty and so adjudges, thereupon it is considered by the court that the defendant pay a fine of one dollar and costs of the prosecution.

G. S. FERGUSON, Judge Presiding.

From judgment of guilty the defendant appealed.

Brown, J., after stating the case. This section of the Revised is substantially the same as the act of 1825, which has been in force since that time, but so far as we have been able to learn this case has never been called upon to construe its provisions. Whether the law has been scrupulously obeyed or has gone into "in-noruous desuetude" is a matter of conjecture. The defendant contends that the proper construction of the act requires that the defendant must have been appointed or elected a commissioner or director to discharge a public trust, and then in the course of such public authority have made a contract for his own benefit; that, according to the verdict, the defendant took no part in the making of the contract, either as alderman, in behalf of the city, or in paying for the work done, nor did he take any part in the making of the contract in behalf of the New Bern Iron Works and Supply Company, of which company he was a stockholder and president; that the defendant could not control the business of the corporation, and that his entire duty in the management of the corporation was to act as head of the mechanical department of the shops.

While we are glad to concede that there is no evidence of moral turpitude upon the part of the defendant we cannot concur with his counsel that a finding to that effect is necessary to conviction, and that the act does not extend to an officer of a corporation, when the dealing is between the corporation and the municipality.

It is true that in People v. Mayer, 84 N. Y. Supp., 817, the Supreme Court of New York City sustained the last contention, in consequence of which decision the General Assembly of New York amended the law of that State so as to include dealings between corporations whose officers, directors or stockholders were municipal officers.

The judgment was rendered at special term of the Supreme Court, nisi prius court, by Judge Bischoff, and not by the appellate division or by a court of last resort.

We are not impressed with the reasoning of the opinion, and do not regard it as a very persuasive authority.

This law was enacted to enforce a well-recognized and salutary principle, both of the moral law and of public policy, that he who is entrusted with the business of others cannot be allowed to make such business an object of pecuniary profit to himself.

This rule has its foundation in scriptural teaching, that no man can serve two masters, and is recognized and enforced in nearly all well-governed countries. As is said by Judge Dillon: "The application of the rule may in some instances appear to be hard upon individuals who have committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty, to preserve the rule in its integrity, and to apply it to every case which justly falls within its principle." Dillon's Municipal Corporations, Vol. 1, E. Ed., sec. 44.

We are not prepared now to hold nor is it necessary to decide, that the statute would revert the case of a mere stockholder in a corporation, that sold goods or did work for a municipality of which he was an officer, when the stockholder had no knowledge whatever of the transaction and possibly could not prevent it, but we are of opinion that it is broad enough to include within its scope this defendant under the facts found.

He was more than a mere stockholder who had no part in the management of the corporation. He was its president and director, and acted as the head and manager of the "mechanical department of the shop."

It was this department that must have manufactured that portion of the articles which could be manufactured and supplied by no other concern in New Bern.

Whether the defendant had actual knowledge of the transaction is immaterial. Occupying the official positions he held in the corporate body and in its working department, the law will hold him to a knowledge of the transactions with the city of which

he was an alderman. The fact that he retired from the meeting when the record of aldermen audited and paid the bill does not change the character of the transaction.

Nor is it necessary to show that defendant directly profited by the contract. In Doll v. State, 15 N. E., 293, it is held that: "To become so interested in the contract, it is not necessary that he make profits on the same. But it is sufficient if, while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and received the same, or part thereof, or has some pecuniary interest or share in the contract."

A case directly in point is Com. v. De Camp, 35 At. Rep., 601, where it is held: "The secretary, who is a stockholder of a corporation having a contract for the lighting of a city, is within the prohibition of Crimes Act, 1890, sec. 66, prohibiting any councilman from being interested in any contract with the city, though he was elected councilman after the execution of the contract." Upon the special verdict the defendant was properly adjudged guilty.

Affirmed.

With further bearing upon the question herein involved we quote Section 33 of the Charter of the Town of Louisburg of 1899, Chapter 243 which reads: "That the Commissioners, at their first meeting after their election, shall appoint a Clerk and treasurer, who shall respectively hold their offices during the official term of the Commissioners, who appointed them, subject, however, to be removed at any time and others appointed in their stead for misbehavior or neglect in office. Before acting the person or persons holding said office shall be sworn to the faithful discharge of his duty, and shall execute a bond, payable to the town of Louisburg, in such sum as the Commissioners shall designate." This is quoted to show that the Charter does not give the Commissioners power to appoint one of their number to office. But we find by a further perusal of the Charter that at the time it was drawn there was special precautions thrown about the Board of Town Commissioners of Louisburg to prevent them from contracting in any manner with themselves. Section 55 reads: "That no Mayor or Commissioners, or other officers of the town government, shall directly or indirectly become a contractor for work to be done by the town, and any person herein offending shall be guilty of a misdemeanor."

The question "has the town required bonds of its officers handling the finances of the town" has been asked by some. We don't know, but presume the men composing the Board of Town Commissioners are too good business men to overlook a feature so important as this.

NOTICE!

Owing to the scarcity of Corn our Grist Mill will be open only on Wednesdays and Saturdays until Sept. 1st, 1923.

J. M. and W. H. ALLEN 6-29-23

MAPLEVILLE ITEMS

As you haven't heard from us in a long time we will send in a few items from the city of Mapleville.

Miss Mable Sledge visited Miss Cooper, of Louisburg the past week. Mrs. Eva Perry has returned from Rocky Mount hospital and is improving.

Miss Lena Wester and Mr. Charlie Leonard, of Cedar Rock, visited Miss Pearl Driver Sunday afternoon.

Mr. Carter Jennings, Miss Pearl Driver, Mr. Henry Jennings, Mr. Morton Solomon, Miss Nannie Jennings and Mr. Solomon Woodlief, and Miss Ethel Jennings went hay riding Saturday night.

Mr. Henry Jennings spent Sunday afternoon at Mr. J. J. Driver's. Mr. Daniel Wester, of Margaret, spent Sunday afternoon at Mr. W. C. Jennings.

Miss Mable Sledge will leave us soon for Rocky Mount, where she will take training to be a trained nurse. Mr. and Mrs. G. E. Allen spent Sunday with his sister, Mrs. Annie Swanson, of Hickory Rock.

Mrs. J. E. Huff, of Cedar Rock, spent Saturday night and Sunday with her mother, Mrs. J. J. Driver. Mr. Carter Jennings, of Cedar Rock spent Saturday night with his people.

Mr. Jake Stallings, Mr. Joe Wester, Mr. Daniel Wester, Mr. Harvey Wray and Mr. Hugh Wester were in Mapleville Saturday night.

Mr. Henry Jennings, of Louisburg, is still hauling timber for Mr. R. E. Perry.

Mr. F. S. Sledge, of Mapleville, has been sick but we are glad to know that he is up and about now. If this escapes the waste basket we will call again when it rains. S. W.

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To My Friends and the Public

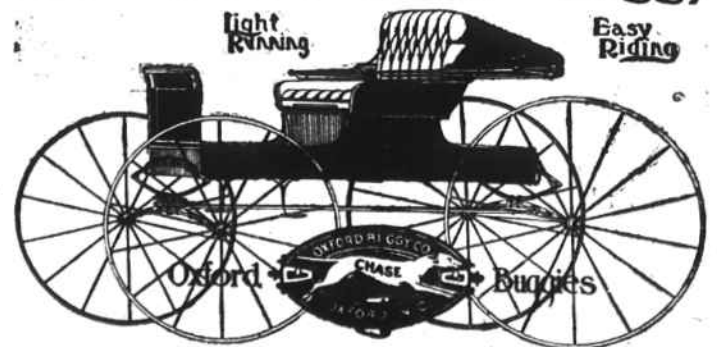
I am going to close out what Casings and Tubes I have on hand, 30x3 and 30x3 1/2 at cost. They have advanced about 20 per cent since I bought so come and get yours before they are gone. A full line of feed and provisions on hand all the time. Am still selling shoes cheap. Come to see me when in town. Am always glad to see you.

Yours truly,

J. W. PERRY

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