

# Western North Carolina Times

Volume XXVIII

Hendersonville, North Carolina, May 30, 1913

Number 9

## WILL REST WITH SUPREME COURT

### After Historic Battle of Legal Giants, Future of Million and Half Dollar Development will Be Decided by State's Highest Tribunal.

Question: Can the property of the defendant company in its location No. 2, owned by it and sought to be condemned by the plaintiff, be developed as a water power, or used as such in connection with or in addition to power actually in use by the defendant company?

Answer: Yes.

Question: Can the property of the defendant company in its location No. 3, owned by it and sought to be condemned by the plaintiff, be developed as a water power, or used as such in connection with or in addition to power actually in use by the defendant company?

Answer: No.

Question: What compensation are the defendants entitled to recover for the condemnation by the plaintiff of their property at location No. 2, as set out in the petition?

Answer: \$6,000.

Question: What compensation are the defendants entitled to recover for the condemnation by the plaintiff of their property at location No. 3, as set out in the petition?

Answer: \$300.

The above are the questions submitted to the jury, and the answers thereto rendered by the jury, in the consolidated power cases which were fiercely contested in the Superior Court last week. There were a good many questions involved; but the four above mentioned were the only ones which were submitted to the jury. And the answers even to these questions are not final. A motion has already been made to have the court set aside one of the answers. And an appeal can, and in all probability will, be taken from Judge Lyon's findings and rulings to the Supreme court. And the Supreme court may order a new trial. And in that event the whole fight will begin over again.

The words "defendant company," as used in the above questions, refer to the Hendersonville Light and Power Company, and the word "plaintiff" refers to the Blue Ridge Interurban Railway Company. But really there were two suits heard together; and the plaintiff in one was the defendant in the other. One suit was the Blue Ridge Interurban Railway company vs. R. M. Oates, the Hendersonville Light and Power company and the American Trust Company. This was a petition to have certain lands condemned. The other suit was R. M. Oates and the Hendersonville Light and Power company vs. the Blue Ridge Interurban Railway Company. This was a petition for an injunction restraining the Blue Ridge Interurban Railway Co. from proceeding with the condemnation. It had been agreed that the two suits should be consolidated and heard at the recent term of the Henderson County Superior Court.

#### Cases Consolidated

The suits were heard. They were argued at length. A week was devoted to the hearing. But no final disposition was made. A number of questions were tentatively answered by Judge Lyon, tentatively, not finally. Four questions, as above mentioned, were submitted to, and at the last moment answered by, the jury. A motion was then made by the Blue Ridge Interurban Railway Company that the court should (notwithstanding the jury's answer to the first of the questions above mentioned) find that the property at location No. 2 is not such a water power as cannot be condemned. Decision on this and other matters was postponed; and a consent order was entered to the following effect:

#### Consent Order

That all motions in these consolidated cases be made in writing, copies furnished to counsel on the other side, and arguments thereon be made in writing; copies of mo-

tions to be served on opposing counsel not later than June 15, 1913; briefs to be filed with the judge not later than July 1, 1913; either side to be permitted to take exceptions within ten days after the judge files his findings, decision and judgment; either side to have 30 days (after signing of judgment) to serve case on appeal; opposing counsel to have 30 days to serve exceptions or counter-case.

Thus judgment will not be given until some time after July 1. Then, in all probability, the case will be appealed to the Supreme Court; and the Supreme Court may either affirm the judgment or order a new trial.

#### Outline of Case

The main facts and the main contentions of each side have already been published; but, owing to the enormous importance of the case (which will have a far-reaching effect on the development of Henderson county's vast natural resources), it is worth while to re-state the matter in simple outline.

Certain well known capitalists great expense been acquiring title to lands on Green River in ornamental use to ornamental use of the river have for a long time and at a very water power which has hitherto been lying idle. These capitalists have incorporated themselves as the Blue Ridge Interurban Railway Company—a corporation chartered under the laws of North Carolina. Their plans include the development of electrical energy on an enormous scale, the construction and operation of an electric railway from Hendersonville to Green River, and the use of electric power for various other important purposes. For the full consummation of their far-reaching plans, they find it necessary to construct a gigantic dam across Green River below the mouth of Big Hungry creek. This dam, when constructed, will submerge a large area of land, most of which land they have already bought and part of which they are now trying to acquire. Their charter gives them explicitly the right to condemn lands. This right is also given to them by the laws of the State and particularly by Chapter 302 of the public Laws of 1907. Proceeding under the rights thus given, they petitioned for the appointment of juries to condemn certain lands. In one case a jury was actually appointed for this purpose. In another case (R. M. Oates and the Hendersonville Light and Power Company) a temporary order was obtained by the defendants restraining the Blue Ridge Interurban Railway Company from going any further with the condemnation proceedings. The case which was heard in the Superior Court last week was a consolidation of two cases; one the Blue Ridge Interurban Railway Company's petition for condemnation of certain lands belong to R. M. Oates and the Hendersonville Light and Power Company; and the other, the petition of Oates and the L. & P. for an injunction restraining the B. R. I. R. Co. from going on with the condemnation proceedings.

In order to avoid the frequently recurring use of long names of corporations, we will call the Blue Ridge Interurban Railway Company "the plaintiff," and we will call R. M. Oates and the Hendersonville Light and Power Company "the defendant."

#### Defendant's Claim

The defendant claimed that the construction of the dam as proposed would submerge its (the defendant's) property at the locations known as No. 2 and No. 3 on Big Hungry Creek; that this property is water power capable of being used and intended to be used in connection with the business now actually being carried on by a public service corporation now engaged in serving the public; and that therefore under the

general law of the State, especially as amended by the so-called 'Oates law' of March 8, 1913, such property is exempt from condemnation.

#### Subsidiary Matters

Various subsidiary matters were brought in. The defendant charged that the plaintiff did not in good faith intend to construct and operate the electric railway as claimed; and the plaintiff counter-charged that the defendant did not in good faith intend to develop additional water power as claimed and use it in connection with its present business. The judge tentatively answered these questions, giving each side credit for good faith.

#### Plaintiffs Reply

In reply to the defendant's claim, that its property at locations No. 2 and No. 3 was exempt from condemnation, the plaintiff claimed that the "Oates law," enacted March 8, 1913, contained no provision making it apply to cases then pending; and therefore could not apply to cases then pending; that the petition for condemnation was a case then pending, having been started February 22, 1913; that therefore the case must be decided under Chapter 302 of the Public Laws of 1907 which, at date when this suit was started, was the law governing such suits.

## HISTORY OF CASE

From The Charlotte Observer.

Much interest throughout western North Carolina centers in the plans of the Blue Ridge Interurban Railway Company with reference to its independent development of water-power interests on the Green River, near Hendersonville with its associated plans for the construction of an electric trolley line to connect Hendersonville with Asheville and with extensions proposed to Rutherfordton where connection will be had with the Seaboard and to Asheville where connection with the Southern will be available. This is strictly an independent enterprise and in no way associated or affiliated with the Southern Power Company or any of its affiliated interests.

During the past week there has been going on in Hendersonville a battle of opposing forces, the one representing the Blue Ridge Interurban Railway Company and the other the Hendersonville Light and Power Company, the jury returning a verdict Saturday afternoon in favor of the Blue Ridge Company which it is claimed by those interested will result in more for western North Carolina than anything that has transpired in a long time.

The question being tried by the court and jury was the right of the Blue Ridge Interurban Railway Company to condemn certain water rights owned by the Hendersonville Light & Power company. The present plan of the Hendersonville company was not involved in any way in the litigation, but the Interurban Company was seeking the right to flood certain lands and water rights on Big Hungry creek above where it flows into Green River.

#### History of the Enterprise.

It seems that Mr. John Law, the head of the Saxon Mills of Spartanburg, Mr. Walter Montgomery, head of the Spartan Mills at the same place, Mr. Horace Bomar, a prominent lawyer and financier, Mr. Alex. White, president of the Merchants' National Bank, Mr. George Ladschaw, civil engineer, Mr. Joseph Lee, a prominent business man, all of Spartanburg, and Mr. William A. Law, vice president and chief executive officer of the First National Bank of Philadelphia, have for a long time been interested in the water powers of western North Carolina. Most of these men have large interests in cotton mills in that section and were desirous of getting cheaper electric power to operate them. In addition to that, they had been for a long time interested in the building of an interurban railway between Spartanburg and Asheville, and several years ago had some surveys made for this railway. They began to acquire water rights for hydro-electric development and finally organized the Blue Ridge Interurban Railway Company whose immediate purpose is the construction of a railway from Hendersonville through Flat Rock and Saluda to the site of the dam on Green River.

#### Magnitude of Enterprise.

The magnitude of the enterprise is staggering. It is proposed to erect on Green River, a short distance below where Big Hungry Creek flows into it

a dam 160 feet high. It may be remarked that the water flowing over this dam will have a fall equal to that of Niagara Falls. The artificial lake it is claimed will be the biggest thing of the kind perhaps east of the Mississippi River, and will put Lake Toxaway far in the shade. The scenery around the lake will be unsurpassed.

#### A Seaboard Connection Proposed.

The railway company to be immediately constructed will run from Hendersonville to Saluda, and will have its nose pointing in the direction of Rutherfordton. It is said to be with in the contemplation of the parties to connect the Interurban with the Seaboard Air Line at Rutherfordton and thus give a freight and passenger connection with this system into Hendersonville and probably with Asheville. This becomes interesting to Charlotte people, as it would give a somewhat easier route into the mountains from this point.

#### Cheaper Power to be Furnished.

The power to be generated by this plant will amount to 50,000 horse power, and the surplus of the power not needed for operating the Interurban system will be sold wherever needed. Wires will be running to Spartanburg and the cotton mills there supplied with electricity, and all through the mountains this mysterious motive power will be conveyed to light the cities and furnished to drive machinery.

#### Obstacles in the Way.

The chief obstacle in the way of the Interurban Company was the acquiring of water rights for the area covered by such an immense dam. The Hendersonville Light and Power Company, which is owned by Mr. R. M. Oates, formerly of Charlotte, had besides its present water power plant two other holdings below this plant on Hungry Creek. The Interurban Railway made an effort to buy these from the Hendersonville company but this company contended that the plants were worth, at least, \$140,000. On the other hand, the Interurban contended that neither one of the riparian rights involved were sufficient to constitute a water power and that they were only worth a few hundred dollars each. Not being able to agree, condemnation proceedings were begun and the whole of last week of the Hendersonville court was spent in trying out before Judge Lyon and a jury the question involved.

#### Representative Plummer Vindicated.

One extremely interesting feature of the controversy arises out of the fact that after the condemnation proceedings were begun last February the Hendersonville company went before the Legislature and secured an amendment to the existing law which it was thought would prevent the Interurban Company from acquiring any of the holdings of the Hendersonville company. Representative Plummer Stewart of this county championed the cause of the Interurban Company before the Legislature and claimed that it was unfair to this company to undertake to change the law after the condemnation proceedings had been begun, and he further took the position that Mr. Oates had no holdings that could be developed with his present plant and that the Interurban company should be allowed to proceed.

On the other hand, it was contended before the Legislature that if the Interurban Company was allowed to proceed, it would ruin the Hendersonville company and would destroy property to the value of nearly \$300,000. Mr. Stewart was snubbed under and the act was passed by the jury seem to have vindicated his position for by their verdict rendered on Saturday afternoon they found that the lower riparian rights for which the Hendersonville company demanded \$55,000 were worth \$300, and that the upper rights for which it demanded \$75,000 were worth \$6,000. The jury further found that the Hendersonville company had at the lower place no power at all that could be developed.

#### An Independent Company.

When the matter was before the Legislature the charge was made that the promoters of this company were but members of a water power trust of which it was charged that the Southern Power Company was the head. It developed on the trial of this action at Hendersonville last week that there was absolutely no ground for this charge, and that the men who are behind the organization are forming an entirely independent company for the operation of an interurban system and the furnishing of electric power. It was also shown in evidence that the Kuhns of Pittsburg, Pa., a branch of Kuhn, Loeb & Co., the great trust magnates, are fighting the Blue Ridge Interurban Railway Company.

#### Spartanburg Takes Notice.

Of especial interest to the people of Spartanburg was the testimony of Mr. Knox, the manager of the Spartanburg Railway & Power Co., who testified as a witness for the Hendersonville company. Mr. Knox's company owns the street railways in Spartanburg and is now the only company furnishing light and power to that city. It would not be hard to guess that he is desir-

ous of keeping the Blue Ridge Interurban Railway Company out of Spartanburg. On the witness stand last week Mr. Knox testified that his Spartanburg company had a contract with the Kuhns of Pittsburg, Pa., that if the latter could defeat the Interurban company in the contest over some of these riparian rights, then the Spartanburg company would buy out the Kuhns. The proceedings against the interest controlled by the Kuhns have been moved into the Federal court and will be heard by Judge Boyd at an early date.

#### Contest for Water Powers.

The rivers of western North Carolina have been for ages dashing their way toward the sea and beyond their value in furnishing a little water to the riparian owners they have been considered almost valueless until within the last few years. Suddenly the whole country seems to have waked to a realization of the fact that here in the bosom of our mountains is to be found power enough to run railroads and motors of all sorts without number. Hence, the struggle to obtain possession of these water powers. The courts and juries and everywhere trying out the rights involved.

#### Goes to Supreme Court.

The case at Hendersonville will go by appeal to the Supreme court of North Carolina. Judge Lyon reserved his final decision until the 1st day of July, but as soon as he renders his judgment the case will be passed up to the Supreme court and the rights of the parties will be there finally determined by the highest court of our State.

#### Notable Array of Attorneys.

There was a notable array of attorneys appearing in the case. For the petitioner, Blue Ridge Interurban Railway Company, were Tillett & Guthrie of Charlotte, Smith & Shipman of Hendersonville and Judge James S. Manning of Raleigh, while appearing for the Hendersonville Light & Power Co., were Judge James H. Merrimon, Britt & Toms of Asheville and Michael Schenck and Staton & Rector of Hendersonville. This list of attorneys will guarantee the truth of the statement that the case was bristling with points from start to finish, and that many knotty problems will be put up to the Supreme court for its final solution.

## SMITH'S SPEECH

Hon. W. A. Smith, who was one of the attorneys for Blue Ridge Interurban Railway Co., spoke in part as follows:

There are just two things in this case, the facts and the law. It is not what the lawyers says, it is not the argument of the lawyers,—the only thing the lawyer can do is to point out the facts so you can make the argument. It may not do any good but it is the business of the lawyers, and that is the way they make their living. If you don't let me talk to you, I could not make a living, so you have got to help me make my living.

Let's see if we can get out of the brush. I want to say something and mean every word I say. I don't want to speak in disparagement of my associates or brother lawyers; I don't want to speak in disparagement of Mr. Tillett and Judge Manning, but I want to tell you if you want the most plausible, most adroit, carefulest, smartest lawyer in the State of North Carolina to try a case, don't get Judge Manning, don't get Mr. Tillett, but get Judge Jas. H. Merrimon. He can come nearer making white look black, he can come nearer converting water into blood, he is the most adroit, keen, discriminating lawyer I ever saw in my life. He can take anything in the world and talk about it and make it so absolutely plausible, apparently, that you believe it. No matter what R. M. Oates has had, he has been smart enough to get the best lawyer he could get.

They have come to you and said that we were playing what? A false game, an insincere game, that we were not true about the matter,—and then to reduce it down from what they say we are not honest. Does it matter whether this Blue Ridge Interurban Ry. Co. is honest or dishonest. What have you got to do with that? It doesn't matter with you. The issue is not "Are we proceeding in good faith?" That was left to His Honor.

There is a great big argument made that the Blue Ridge Interurban Ry. Co. had not paid anything for this stock. That is smart. If the Blue Ridge Interurban Ry. Co. had gotten over \$200,000 worth of property without paying anything they are smart. The question is have they got it? Mr. Law, whose character stands, and whose character you would say was good, swears that they have invested over \$200,000,—but they say the Blue Ridge Interurban Ry. Co. didn't pay anything for it. The answer to that is that the Blue Ridge Interurban Ry. Co. paid for it in stock. What is stock? Who owns the First Bank and Trust Co. here? The stockholders. I want to tell you I have a little stock in that and I never paid one cent for it. There is not a stockholder in that bank that paid one cent for the stock in the new bank organized, the First Bank and Trust Co. It has got \$125,000 capital and a great big surplus and lots of money. They have not paid one cent for it. How is that? It has existed but a little while. It was the first National Bank and the Wanteska Trust & Banking Co., the two

(Continued on Page 6)

## Change of Venue

I will state to all who are interested in the Henderson County Singing Convention, that it will be held at the Auditorium instead of Laurel Park.

The officers request that all classes that can conveniently do so will bring banners with the name of their class printed on it. J. F. Stepp, Pres

## Turtle and Carp

A monster turtle—the largest ever seen here—was killed by W. M. Hill and Thomas Williams, this week, in Lyda's pond, just outside the city.

The turtle's shell measured 34 inches and the big fellow weighed 34 pounds. A load of buckshot did the work. The shell was too large for a half bushel basket.

About the biggest carp ever caught here was captured recently by Mr. Hill in S. J. Collins' pond on the Clear Creek road. Mr. Carp tipped the scales at 17½ pounds,—which is some fish you must admit.

## Water!

On account of the heavy rains last Friday the announced cleaning of the city's reservoir was postponed until Monday, June 2. The water will be cut off from 2 to 5 in the afternoon.

## Early Closing

Effective Monday, June 2, all the merchants of the town will close their stores at 7:30.

## For the Farmers

In accordance with the suggestion made by The Times last week, the Greater Hendersonville has appointed a committee to appear before the county commissioners Monday with an attractive offer in regard to the farmers' cooperative demonstration work.

## To Beautify City

A sincere effort to beautify the town is being made at the depot. The ugly, red bank back of the passenger depot is being sodded, the word "Hendersonville" is set in the grass in great stone letters. Flower beds at the foot of the bank will make the improvement still more attractive. Of course, the Woman's Auxiliary of the city Club is responsible for the work.

## Childrens Chapter

All Hendersonville girls and boys under sixteen years of age, who are eligible, are invited to the home of Mrs. Michael Schenck, Friday afternoon, June 6, at 4 o'clock for the purpose of organizing a Children's Chapter of the Confederacy. There are no initiation fees or yearly dues connected with this organization. Each child pays 10c for certificate of membership. The children will be under the leadership of some capable lady appointed by the Margaret Davis Hayes Chapter, and will meet as often as their leader deems advisable.

The object of this organization is to teach the children Confederate history, story and song; to teach them to revere the names and deeds of those who fought, bled and died for their beloved homeland; to teach them to admire and love our beautiful Southland and her valiant men and women.

Let every mother who has an eligible child send him or her to Mrs. Schenck on the above mentioned date and hour.

## Ought to Grow Rich!

An agricultural county, with a climate adapted to the production of all kinds of grains and vegetables, and with a practically unlimited home market for all it can raise,—such a county ought to grow rich.

Mrs. Charles French Toms and children are the guests of Capt. and Mrs. M. C. Toms.