

# STATE HAS PRESENTED VAST AMOUNT OF EVIDENCE IN TRIAL OF FORMER COUNTY OFFICIALS AND BANKERS DURING HEARING

(Continued from page one)

Bagwell was asked to whom he told what McNeely had said. Bagwell said he had told Felix Alley, J. W. Pless, and, he believed, he told Mayor T. W. Whitmore. Jones then brought from Bagwell admission that Bagwell himself had been in trouble years ago, he said. Arrested once for driving stock across the state line, in violation of the law. Another time, witness said, some man left some liquor at his house and the officers arrested Bagwell. He served three months for this, witness admitted.

**Thursday Afternoon.**  
Mr. Woodley told of making investigation of the assets of the bank, and stated that he had searched the records of the office of register of deeds for prior mortgages on real estate upon which bank loans were secured by deed in trust, and had also used the tax books in his investigations. Asked if his fifteen years in the banking business had enabled him to appraise real estate, Mr. Woodley said there was difference in real estate values in Eastern Carolina and in this section. Said he had made such investigations since coming here as would enable him to place fair valuation upon property in Transylvania county.

At this point Solicitor Pless offered Woodley as an expert on real estate values, and defense objected, the court sustaining the objection. Witness said that his experience in banking business had been of advantage to him in his work as liquidating agent.

"From experience, you have had have you an opinion as to whether or not the Brevard bank was insolvent? Witness was asked. Objection by defense, sustained by the court.

Solicitor Pless asked witness what he had done to collect notes held by the bank, and Woodley said he had written two and three letters to each one whose notes are held by the bank and by other banks where such notes are put up as collateral. At this point the court stopped this line of evidence declaring it took in too much territory. Then Woodley was asked what investigation he had made of financial worth of those whose notes are held by the bank, and he said he had consulted with business men, lawyers, doctors, and in every way he knew how to get a line on note makers.

Question of solvency of the bank again came up, the jury was sent from the room, and the question argued. Defense counsel asserted that there is no charge or intimation of charge in the bill of indictment that the commissioners knew the bank was insolvent, and that the matter had no bearing upon the case at all. Almost half an hour was consumed in discussion of case and its many points while jury was absent, during which time Judge Sink declared that if the commissioners even borrowed money when they did not need it, they were violating the law. Solicitor remarked that the chief finance officer of the county had said the county needed money when they had money in the bank, and read items from the budget of 1930 for various funds, showing amounts already in these funds. After a while the discussion led back to Woodley and the bank records, and Woodley was offered as an expert on securities and their values. Judge Sink ruled that witness could testify as to his investigations of collateral security or endorsements. Mr. Smathers, of counsel for defense, expressed the opinion that Woodley, having come here in January, this year, could not properly place valuations upon securities and endorsements that were accepted by the bank a year ago, as conditions have so radically changed.

**Says Bank Was Insolvent.**

Upon return of jury and resumption of evidence, in reply to a question from solicitor, Woodley declared in his opinion that the Brevard Banking company was insolvent in September, when the hundred thousand dollar note was issued. He asserted that a large number of people who owe the bank have given every indication that they never intend to pay their notes. Woodley stated that fully one-half of the money loaned out by the bank was secured by real estate.

**Cross Examination.**

J. Bat Smathers, counsel for Shipman, conducted the cross examination of Woodley, who, in reply to questions by Smathers, said he was 31 years old, starting in banking business fifteen years ago, first as messenger, then collection teller, and gradually advanced to the position of cashier, serving ten years of the fifteen as teller. Woodley admitted that he had no experience in real estate; that real estate transactions in the Elizabeth City bank where he worked was handled by lawyers and superior bank officials. Witness was asked if he could come into Transylvania county, and in six or seven months learn the value of real estate under mortgage to the bank. Witness declared he was able to value it as to whether his notes were properly secured. Witness admitted that he had spent fully half the time he has been here in the bank, and Smathers drew the time down to half time since January 13 that witness had been devoting to appraising property over the county under mortgage to the bank. "How much assets did the bank have?" Smathers asked. "One and a quarter million dollars," Woodley said. "How much of that amount was secured by real estate?" Smathers asked. "Four hundred thousand dollars," witness replied, "or about that much, I estimate." Smathers then asked: "How many pieces of property are there under mortgage to the bank?" "From 125 to 150 pieces," Woodley said. "Have you been on and inspected all this property?" Smathers asked the witness. Woodley said he had been on about half of them, and had had the

assistance of C. Y. Patton in making investigations of all property owned outright by the bank, and that Pat Kimzey had been with him on some of his trips of inspection.

Mr. Smathers insisted that Woodley tell exact number of pieces of property on which bank held deed of trust, and by referring to bank books, this information was given, the number being 121 pieces of property under deed of trust to the bank. Then Smathers insisted that Woodley give names of men whose property he had been on and the valuations placed upon each piece. The following properties were named by Mr. Woodley, in the name of their owners:

A. V. Aiken, James Bostic, W. A. Bracken, Mrs. A. A. Bridges, Camp Transylvania, Mrs. H. C. Clarke, D. L. English, W. McK. Fetzler, R. L. Gash, J. L. Gillespie, Lewis Gravelly, W. H. Grogan, Jr., J. C. Hendrix, F. E. B. Jenkins, Miss Florence Kern, C. Kilpatrick, Judith King, E. W. Lyday, Judson McCrary, Sam McCullough, Hinton McLeod, J. A. Miller, M. A. Mull, C. K. Osborne, J. W. Smith, Roy Whiteside, J. R. Whitmore, J. P. Whitmore, Mrs. Riley Young. Thus, Mr. Woodley showed that he had been on 29 pieces of property out of the 121 on which the bank holds deeds of trust. Witness could not tell number of acres in the aggregate, nor the per centage of acres inspected by him in making appraisals. Under further questioning Woodley admitted that he had not posed as an expert on real estate values, and insisted that he had satisfied himself only as to the value of each piece of property in connection with the amount of the loan so secured.

**Friday Morning**

Woodley was again on the stand Friday morning, with Smathers on the cross examining end of the line. Witness admitted under fast questioning of Smathers that he was made cashier of the Elizabeth City bank on the 15th day of November, and that bank failed on the 18th day of December, and that Woodley came to Brevard to take charge of the Brevard bank's liquidation on the 13th day of January, this year. Woodley, in reply to another question, said he knew that many banks failed throughout the country, and especially in Western North Carolina, during the past winter.

Mr. Smathers asked Woodley to read from the bank records and tell the jury what the assets of the bank were on Sept. 1, 1930, at the time Mr. Woodley had declared on the day before that the bank was insolvent. The report, according to the witness as he read from bank records, showed assets of \$1,600,250.41, and liabilities of \$1,404,257.13, leaving net showing of \$195,993.28 more assets than liabilities.

**The \$100,000 Note**

Under cross examination Woodley stated that first time there is indication of placement of the famous \$100,000 note was shown on certificate of deposit ledger of November 24, when a certificate of deposit in the sum of \$101,625 was issued to W. L. Couch, county treasurer. This would be the amount of note, plus the interest from July 30 to that date. The next regular course the certificate should take, the witness said, was cashing of the certificate, which was done on November 29, when another sum of \$70.55 interest from 24th to 29th, was added thereto. Witness said the county had several different accounts, according to law, handled in the usual banking manner.

"How much money did the county draw out of the bank from Sept. 17 to Nov. 24th?" witness was asked. State objected to question, and court overruled objection.

It was shown that the county checked out of the bank the sum of \$218,000 from Sept. 17, date of note sale to Nov. 24, date of depositing note. The defense accepted this showing as splendid evidence in refusing the charge that the commissioners had borrowed \$100,000 to help the bank, while the county had withdrawn from the bank the sum of \$218,000.

**Jones Takes Witness**

G. Lyle Jones, of counsel for the commissioners and Fisher, then took the witness on cross examination. Woodley stated to Mr. Jones in reply to the latter's questions that the Elizabeth City bank where Woodley was an officer closed because of heavy withdrawals, and declared he believed his bank there was solvent when it closed, but the officers and directors knew that it could not stand the heavy withdrawals any longer. Jones asked witness if that wasn't the case in the forced closing of practically all banks, and witness said it was. Witness said records showed heavy withdrawals from the Brevard bank just prior to its closing, and that deposits fell off. Witness said he was not here prior to January 13, and didn't know how real estate conditions looked before that date, but that they look bad now. Taking the witness back to the property which he had visited and valued, as testified on the previous day, Mr. Jones asked Woodley what the Aiken property was worth, in his estimation. Woodley said he had no idea what it is worth, nor had he any idea what the Baldwin property at Penrose is worth, saying that he was convinced that it was worth the amount of indebtedness which the bank holds on it. Mr. Jones then called over the other pieces of property which the witness had testified that he examined, and he admitted to Jones that he had no idea of the worth of many pieces of the property. Woodley said the Fetzer farm is worth \$12,000. "Why, Mr. Woodley," Jones said, "do you not know that the Fetzer place is listed on the tax books at \$16,000, and you say it is worth no more than \$12,000?" Woodley held out that in his opinion the place was worth no more than \$12,000. Asked about the J. R. Whit-

mire farm, witness said it was worth \$15,000 to \$20,000—not more than \$20,000. Jones asked him how many houses there are on the place, and witness did not know. Mr. Jones asked witness if he did not know that the J. R. Whitmire farm is one of the best farms in the county, comprising really three farms, three houses and all barns and necessary outhouses. Asked then how long he spent on the farm on his trip of inspection, Mr. Woodley said he was on the place for about one-half to three-quarters of an hour.

"Is that the way you have valued all the property upon which the bank holds mortgages?" Mr. Jones asked. The witness insisted that he had looked at property with but one purpose, and that was to see if it was worth the amount of the note secured by the property, and had satisfied himself on this point.

Mr. Jones asked witness about notes that were secured by stock in various companies and if he had examined the market price or cash value of such stocks, and witness said he had. "Did you go into the audits of such companies where the bank holds stock as collateral?" Witness said he had not, but had made other inquiries and examinations.

"Did the commissioners of Transylvania county pay off a note in September of \$75,000?" Jones asked. "Yes, they paid \$79,530.82, from the debt service fund."

"In whose name were the county deposits on December 15, when the bank closed?" Jones asked the witness.

"In the name of G. M. Justus, county treasurer," was the reply.

Taking up the several funds of the county, Mr. Jones asked witness to refer to bank's records and see if these funds were transferred from the old county treasurer, to the new county treasurer about the first of December, 1930. Witness testified that bank records showed that each fund had been transferred on December 2 from W. L. Couch, to G. M. Justus. The same was true of all certificates of deposit.

"Mr. Woodley, was all the \$101,625, proceeds from this note in question, put to the credit of the county?" "Yes, and on Nov. 29, and the additional interest also; the county got credit for all of it."

"Mr. Woodley, have you found any record of any county money in the bank that went to any one except to the credit of Transylvania county?" Mr. Jones asked.

"I have not," the witness replied.

Mr. Jones then asked witness how much money was turned over to Mr. Couch, as county treasurer, on the first Monday of December in 1929.

"T. E. Patton, Jr., treasurer, December 3, 1928, turned over \$265,875.86," was the answer. Mr. Jones wanted the amount of all the county funds that were turned over, and all the records were not on hand, and this question was left open.

It was shown by the witness that the county treasurer, W. L. Couch, turned over to G. M. Justus, present county treasurer, the sum of \$580,464.28 on the first day of December, 1930.

**Pless Takes Witness.**

"Mr. Woodley, did any money pass from the former county treasurer to the present county treasurer on December first?" Defense counsel entered vigorous objection to this proposition, asserting that a bank is required to keep only 15 per cent cash reserve and five per cent on time deposits, and records of the bank would show the amount of cash reported on hand. Then Pless asked witness if there was more money or less money on deposit in the bank when the bank failed than there was when Couch turned over the county funds to Treasurer Justus. Again defense counsel objected, stating that these clients are not responsible for what the county had on December 15, that all funds had been turned over to the new officials, and that the question had nothing to do with the trial of these men now being tried.

Then Pless asked from what fund the \$75,000 note had been paid in September, and witness said it was paid from the debt service fund. He also testified that there was the sum of \$60,842.93 left in the debt service fund after the note had been paid.

Solicitor Pless then brought from witness information as to the amount of money in the bank when the bank closed December 15. Witness said there was shown on the books to be a cash balance of \$18,654.05, in two items. In banks, \$17,283.33, and cash on hand \$1,371.72. On December 2, when transfers were made from old board to present board, witness said, the records showed cash balance of \$105,552.55, and Smathers asked Woodley what the legal reserve for that day would have been, and witness answered that, according to the books, the necessary amount of money would have been \$104,000.

It was established through testimony of witness that the bank had \$50,000 more legal reserve in September than required minimum; and it was established that all of the proceeds from the sale of the \$100,000 note was allocated to the several different funds.

Mr. Woodley said the deposits in the bank on Sept. 24 were \$1,287,109.93, and that between that date and December 15, when the bank closed, these deposits had fallen off in the sum of \$365,801.26.

Court adjourned until Saturday morning, with defense feeling that it had won about every round in the day's battle.

**Saturday Morning**

James F. Barrett, editor of The Brevard News, was first witness Saturday morning. Was asked by state attorneys if a letter was published in Brevard News bearing signature of Thos. H. Shipman and Jos. S. Silverstein, about first of September. Witness said such letter was published. Asked who brought letter to the News office and witness asserted he could not recall the instance. Witness explained that hundreds and hundreds of pieces of copy came into the office for publication; that he did most of the work soliciting ads and other outside; that other people left copy with some one in the office in his absence, and there was

no way remembering a particular piece of copy that far back. He testified that he was thoroughly satisfied at the time of the authority for publishing the letter, otherwise it would not have been in the paper. Only incident in connection with publication of the letter was reference made by Shipman in conversation later, that he (Shipman) said he did not know why Fisher was so insistent upon having a letter from them. Jury was sent from room, while counsel argued points in the case, and the solicitor called upon the service to serve notice upon defendants to produce the original letter.

**Ira Galloway on Stand**

Ira D. Galloway, register of deeds from 1926 to 1930, was next witness. Identified certain county records, and told of resolution being prepared and presented to board to be acted upon authorizing the issue of the \$100,000 note. Statement from McNeely, who was chief finance officer of the county, was introduced, setting forth necessity for issuance of the note and borrowing the money. Resolution was adopted at the commissioners meeting Sept. 3, and notice of sale of note ordered published in The Brevard News, The Asheville Times and The New York Bond Buyer. Bids were to be opened at the meeting of the board on September 13. Mr. Galloway identified statements and cancelled checks of the county, endorsed by Ralph Fisher. Statement was bill from Mr. Fisher as county attorney for partial payment of legal expense in connection with handling tax foreclosure sales for the years 1922 to 27, total payments being about \$8,000. It was shown that there were about 350 such tax sales items handled by the county attorney, and that Fisher had several clerks working on the preparation of these cases.

Mr. Galloway identified the signature of J. H. Pickelsimer to a letter read to the jury purporting to be from Mr. Pickelsimer as retiring chairman, to O. L. Erwin, the incoming chairman. Mr. Galloway also testified that he saw the original letter that was published in The Brevard News on Sept. 3, signed by Shipman and Silverstein, lauding the commissioners for decision to sell the county note, and said Mr. Pickelsimer showed him the letter. Extracts from the minutes of the meeting of the commissioners held on Sept. 13 were read setting forth that all members of board were present. Meeting was called for the purpose of receiving bids for the note. No bids were submitted, and motion was made to recess to Sept. 17. At this advertised recess meeting on the 17th, witness testified, a bid was received from the Brevard Banking company, signed by T. H. Shipman as president, that bank would buy the note at par, 5 per cent interest, accrued from July 30. Note was ordered sold.

Mr. Pless had introduced the note, it being in denominations of \$10,000 and there being ten notes, after Mr. Galloway had identified signatures of J. H. Pickelsimer, C. K. McNeely, Ralph R. Fisher and his own, as officials of the county upon the note. Galloway had testified that he had seen the bank officials in conference with McNeely in McNeely's office a day or two prior to adoption of the resolution ordering sale of note.

Mr. Pless after introducing letter from Pickelsimer to O. L. Erwin, read its contents, which set forth the amount of money the county had on deposit; the amount of security which the bank had up to guarantee safety of these deposits, and suggested that the new board increase this security as rapidly as possible. The letter told the new board of work done by the retiring board in connection with objecting to the United States government buying 2000 acres of land from Jos. S. Silverstein, as the sale of this land would remove that much taxable property from the county lists, making the tax burden that much heavier upon the rest of the tax payers, as the government pays no taxes upon its property.

**Cross Examination**

J. Bat Smathers opened cross examination of the witness, who stated in reply to questions that there was nothing unusual in the fact that citizens called at the office of Mr. McNeely, who was county accountant and had the back tax books in his office; that he had heard no reference made by Shipman or Silverstein concerning the sale of the note; that he knew of no combination nor conspiracy on the part of anybody in the sale of the note or any other matter in connection with the county. Galloway stated that the bankers were not present at the board meeting when the resolution was adopted and the note sold; that Ralph Fisher had nothing to do with the preparation of the resolution or the sale of the note; that A. F. Mitchell, bond attorney, prepared the papers, all of which were legally prepared and in regular form. Galloway admitted that he did not compare the original which he saw with the letter that was published in The Brevard News. He could not be certain, he swore on cross examination, that the letters were the same. Galloway told of extension of time that year for payment of taxes; that no taxes were being paid and school was to start on first Monday in September, and no funds were available for this work. Witness said Mr. Fisher was sent to Washington to protest against the government purchase of the 2000 acres of land from Silverstein on behalf of the commissioners. Jury was sent from the court room while arguments were heard.

Mr. Breese wanted to bring from witness the existing feelings of animosity between Fisher on the one hand and Silverstein and Shipman on the other. Galloway testified to his belief of this state of feelings; had never seen Silverstein and Fisher together, but had often heard Fisher cussing Silverstein "behind his back." Jury brought back and G. Lyle Jones conducted cross examination for Fisher and the board. Mr. Jones had Galloway to identify county record book which had been introduced and which Jess A. Galloway had previously sworn contained several blank pages between recordings of regular

minutes of the board meetings and the minutes ordering sale of the note. Ira Galloway assumed full responsibility for the condition of the book, testifying that he arranged it in that manner so as to keep the records dealing with notes and bonds in one section and records of ordinary and regular meetings in sequence in the other part of the book. Swore that commissioners did not even know that the book was planned that way; that he did it on his own accord and for his own convenience. Galloway told of

the act of the leg which authorized refunding bonds to numerous outstanding falling due and about told of two \$75,000 notes during the year, and said the note sale money was these notes. He testified Northrup, consulting Charlotte, assisted Mitchell in statements and resolutions. (Continued on page 2)

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