

# Judge Denies New Trial to Four Men In Bank Case

(Continued from page one)

that as he had known the former sheriff of Haywood county that he only waved to him in passing and passed the time of day, or asked how he felt. The state presented J. W. Medford who also made denial of the act, stating that Mr. Moffitt had no spoken to him, and that he did not know Mr. Moffitt.

The other event to which the court apparently attached importance was that brought out in affidavits that the jurors, while serving here at the trial, went into the building of the Brevard Banking company; that a man was met and addressed by another man, who wanted to know if the first man was in charge of the bank. Reply was made, the affidavit alleged, by the first man who said his name was Butte; that he had made an audit of the bank. Then, it was brought out in the affidavits, the man who said his name was Butte was asked how long the bank had been busted, whereupon, the affiants said, Butte replied by saying that the bank had been busted ever since the bursting of the real estate boom in 1925 or 1926.

Many other affidavits were presented, but it was upon the two above mentioned that importance seemed to be placed. Judge Moore announced at conclusion of the evidence and after hearing the attorneys in their speeches, that he would communicate with Judge H. Hoyle Sink, trial judge, as to the allegations contained in the affidavits concerning the Butte statement at the bank, in order to ascertain if these things were ever brought to Judge Sink's attention.

The petition for a new trial was strenuously opposed by counsel for the state, and defense attorneys made equal effort to convince the court that their clients deserved a new trial. While each lawyer addressing His Honor on the question made earnest and appealing pleas in their cause, opinion among the spectators and court attendants seems to be almost unanimous that J. Bat Smathers, Asheville lawyer, delivered one of the most powerful appeals ever heard in a Transylvania county court. His speech was more than an address by a lawyer to a court—it was a heartfelt appeal of a man who believed in the innocence of his clients. An eloquence born of sincerity, with a touch of desperation in its tone, brought from the heart of Mr. Smathers a ringing appeal in behalf of these citizens that brought tears to the eyes of many men in the courtroom.

Friends of the defendants worked hard and faithfully in efforts to help in obtaining a new trial, by assisting them in gathering evidence in support of their fight for another chance at freedom. Men in all political parties and of all denominational creeds, worked hand in hand in behalf of the defendants.

What has become known as "the Brevard bank case" had its origin when J. H. Pickelsimer, C. R. McNeely, A. M. White, S. A. Owen and W. L. Talley, former county commissioners, and Ralph R. Fisher, former county attorney, and T. H. Shipman and J. S. Silversteen, president and vice president of the Brevard Banking company, were indicted on a charge of conspiracy. A county note in the sum of \$100,000 was sold by the county to the bank in September, 1930. The bank closed on December 15, following. In August, 1931, the men were tried in Judge Hoyle Sink's court, before a jury brought in from Haywood county, and convicted.

Penitentiary sentences were passed upon Shipman, Pickelsimer, Fisher and McNeely. Fines were imposed upon Talley, White, Owen and Silversteen. An appeal was taken to the Supreme court, and White, Talley and Owen were freed. By a three to two decision the verdict against the five others was upheld. Two members of the Supreme court declared that there was not sufficient evidence to convict any of the men.

Following is a copy of the petition filed by the defendants in asking for a new trial:

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA  
IN THE SUPERIOR COURT  
AUGUST TERM, 1932  
STATE

-vs.-  
T. H. SHIPMAN, J. H. PICKELSIMER, C. R. McNEELY, RALPH FISHER AND JOSEPH S. SILVERSTEEN.

To The Honorable Walter E. Moore, Judge holding the Courts of the 18th Judicial District of North Carolina:

The defendants, T. H. Shipman, J. H. Pickelsimer, C. R. McNeely and Ralph Fisher, respectfully petition the court and show:

1- That the defendants were indicted on the bills of indictment appearing of records in this cause and were tried and convicted at the Special August Term 1931 of the Superior Court of Transylvania County.

2- That the defendants nor either of them are guilty of the offense charged and upon which they were convicted.

3- That the defendants and each of them are informed and believe that they have not had a trial as contemplated by law on account of the misconduct of the jurors who tried the cause as hereinafter set out.

4- The defendants are informed and believe that they are entitled to a new trial on account of the miscon-

duct of the jurors who tried this cause and on account of evidence newly discovered and not available to the defendants at the time of the trial, as shown by affidavit of defendants filed in this cause, for the consideration of the court upon this motion.

-5-

That your petitioners have heretofore given notice of the filing of this petition by a petition and motion in the cause which has been duly set for hearing at this term of this honorable court by the Honorable J. I. Clement, Judge holding the courts of the 18th Judicial District at Rutherfordton on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this being the first term of the Superior Court of Transylvania County since the opinion sustaining the conviction as to these defendants was certified down by the Supreme Court of North Carolina to the Superior Court of Transylvania County.

-6-

That during the progress of the trial of this case the jury chosen, sworn and impaneled to try the defendants were guilty of misconduct, in that, two three, four, five, or six of the jurors, during the recess of the court, and while the jury was passing the Brevard Banking Company, without leave of the court and without the knowledge of the defendants, members entered the Brevard Banking Co., the door of which was open and the business of the liquidating being carried on therein at the time.

(B)

That certain of said jurors that entered the bank, (one or more) while in the said Brevard Banking Company building, were guilty of misconduct in that one of said jurors made inquiry as to how long the Brevard Banking Company has been busted and said juror or jurors were informed by a person, whose name was Butte, that he was the auditor who audited the bank after the close of the bank and that the bank had been busted since 1925 or 1926 at the time of the busting of the real estate boom.

(C)

That a juror, W. R. Medford, chosen, sworn and impaneled to try the issues and as a member of the jury, rendered the verdict of guilty in this cause, during the progress of the trial was guilty of gross misconduct and entitling the defendants to a new trial, for that when the jury had completed their lunch in the Canteen, a cafe in Brevard, the said W. R. Medford walked out of the restaurant head of the other jurors and in the absence of the other members of the jury, carried on the following conversation with a state witness, E. F. Moffitt, the said Moffitt saying to the said Medford: "I am one of the state's witnesses in the case and I have got nothing against these men, but the people want these men convicted." To which the said Medford answered, "Don't you worry about their being convicted. That is what we are here for."

(D)

For that the juror, Herbert Burnett, who was sworn, impaneled and sat upon the case was not a qualified juror, because when the said Burnett, upon his examination as to his qualifications as a juror, stated that no person had ever discussed the case in his presence, which fact so stated was not true as appears from the affidavit filed in this case.

(E)

That others of said jurors, as the petitioners are informed were guilty of misconduct that disqualified them, in that they, as petitioners, are informed, after the trial and adjournment of the court, stated matters that were wholly disqualifying as a juror to serve in the case.

That in addition to the misconduct of the jury are hereinafter set out, the defendants, T. H. Shipman and Ralph Fisher have discovered, since the adjournment of court, and since the rendition of the opinion affirming their conviction by the Supreme Court, that on August 4, 1930, and prior to the date alleged that the defendants conspired to fraudulently issue notes in Transylvania County for the benefit of the Brevard Banking Company, a motion was carried and entered upon the records of said meeting to appoint a committee to arrange about financing the debts of the county, and Book No. 5, page 73, of the County Commissioners of said county is here referred to and made a part of this petition as if herein set out in full. T. H. Shipman further says that the record of the minutes of the meetings of the Commissioners of Transylvania County shows that the Board of County Commissioners prior to the time, the County Commissioners had passed, an order granting the extension of time for the collection of taxes in Transylvania County for a period of thirty days, and this knowledge did not come to T. H. Shipman until after the trial of the defendants and the adjournment of the court; that said misconduct of said jurors and newly discovered evidence did not come to the knowledge of defendants until after the conviction and adjournment of the court at which they were convicted; that the defendants, Shipman and Fisher, had no knowledge or information as to the matters contained in the minutes of the board of Commissioners and were ignorant of said minutes, and had no reason to know that such minutes existed and were not fixed with any knowledge of said minutes, and it was not in their knowledge to search the records.

Your petitioners further show to the Court:

(1) That the witness above referred to will give the newly discovered evidence set out and herein referred to and will testify to said misconduct and newly discovered evidence at a new trial of this case.

(2) That the newly discovered evidence, as these petitioners are informed and believe, is probably true.

(3) That said evidence is competent, material and relevant.

(4) That your petitioners used all due diligence and proper means to procure all evidence to be used as testimony at the trial of the case, but the petitioners, Shipman and Fisher, could not avail themselves even by cross-examination of the contents of the record of the County Commissioners because of their total ignorance of the contents; that none of the defendants had any knowledge or discovered any of the other misconduct alleged herein of the jurors or any of the newly discovered evidence until after the trial of the case and adjournment of the court at which the said petitioners were tried and sentenced, nor could they, by the exercise of due diligence, have acquired that knowledge of information.

(5) That the newly discovered evidence, both as to the misconduct of the juror, and as to what is contained in the affidavits and minutes as above set out is not cumulative, but new evidence which was material at the trial and with respect thereto.

(6) That the matters alleged and the evidence referred to in this petition and in the affidavits and certified copy of the minutes of the Board of Commissioners hereto attached do not tend only to contradict any former witness or to impeach his affidavit him.

(7) That said evidence is of such nature as to show that on another trial a different result will probably be reached and that the right will prevail.

Your petitioners further show the court that, as stated above, the information hereinafter set out came to the knowledge of your petitioners too late to be used at the trial of this case. That an appeal from the judgment in the above entitled cause was taken to the Supreme Court of North Carolina and that said judgment was affirmed and the opinion has been certified to the Superior Court of Transylvania County the same having been filed therein on the 12th day of May 1932.

WHEREFORE, your petitioners pray that an order be issued by this Honorable Court addressed to the Clerk of the Superior Court of Transylvania County ordering and requiring said Clerk to take no further action in this matter and that a stay of the execution of the sentence and judgment of the Court in this case be had until the next criminal term of the Superior Court of Transylvania County, at which time your petitioners will present to the Court evidence in support of this motion.

Attorneys for the Defendants:

T. H. SHIPMAN, J. H. PICKELSIMER, C. R. McNEELY and RALPH FISHER, each being first duly sworn, deposes and says: That he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

T. H. SHIPMAN  
J. H. PICKELSIMER  
C. R. McNEELY  
RALPH FISHER  
Affiants.  
Sworn to and subscribed before me this the 1st day of August 1932.  
OTTO ALEXANDER,  
Clerk Superior Court.

## ORR REUNION TO BE HELD ON AUGUST 26

The annual reunion of the Orr family will be held at the V. M. Orr camp grounds in Hendersonville on Sunday August 26, according to a recent announcement of Oliver H. Orr, president of the convention. The camp grounds two miles east of Hendersonville were the scene of the reunion last year when a large number of the friends and relatives of the Orr clan were present. An even larger crowd is expected this year to enjoy the program which is being arranged at this time. A basket dinner will be held on the grounds at the noon hour.

Frank Morris left Wednesday for his home in New York after visiting his cousin, Miss Winifred Nicholson here for several days.

## DR. W. M. LYDAY TO USE GARREN PLACE

Dr. W. M. Lyday, for many years a popular practicing physician here and Dr. Harold J. Bradley, his grandson have made plans here to locate their offices in the H. Garren building on East Main Street. Their offices will be located on the second story of the building while H. Garren will continue to operate his business in the lower section. The entire building was purchased by Mrs. W. M. Lyday and plans are being made at this time for the revision of the upper story and other improvements are underway.

## THE RIGHT WAY TO TRAVEL is by train. The safest. Most comfortable. Most reliable. Costs less. Inquire of Ticket Agents regarding reduced fares for short trips.

SOUTHERN RAILWAY SYSTEM

# Vacation Bible School Is Given Praise By Brevard

The educational plant of the Baptist church was the scene of unusual interest and activity Sunday evening when 650 people viewed the attractive handwork displays of the students of the Daily Vacation Bible School which closed with the commencement program that preceded the handwork display.

The parents saw the class rooms as they were during the operation of the school. The articles which the pupils had made themselves were displayed with names attached so that fond parents could view and compare their children's work.

An element of surprise was the quality of the woodwork which the junior boys had done in making fernery sticks and miniature wooden animals for lawn adornments. Shining with freshness, their paint hardly dry, they turned the temporary workshop in the basement into one of the most attractive exhibits of the school.

Credit for instructing the boys below the ages of 9 and 12 in making these exhibits is due to Mrs. Mitchell Neely and Mrs. Ralph Duckworth. Mrs. Ruffly assisted part time in this department. Mr. John Reynolds and Mr. Dean Whitlock also aided considerably in this work.

The primary departments next door to the workshop attracted throngs of people to the extent that the writer found it difficult to enter the room because of the crowded condition. It was surprising to see the sail boats, potato animals, Japanese lanterns and other articles when one considers that they were made by boys and girls between the ages of 5 and 8 years. Miss Loraine Payne and her splendid corps of assistants received many compliments from visitors. Her assistants were Miss Fannie McGehee, Miss Clara Garren, Miss Sarah Helen Smith, Miss Nelle Duckworth, Miss Martha Vaughn, and the other teachers in the department. Mrs. T. E. Reid, superintendent, Miss Eva Call, music teacher, and Mrs. Lillian Hadley, story teacher.

Gasps of surprise came to the lips of observers when they learned that the stuffed rabbits in the junior department were made by girls as young as 9 years. The paper spoon dolls also attracted considerable attention. Miss Lena Allison and Miss Vesta Young, Miss Helen Erwin, and Miss June Grogan are responsible for this department handwork along with Miss Geneva Neil, superintendent; Miss Marjorie Garren, assistant superintendent; Miss Beulah Garren, secretary; Miss Mary Frances Biggers, story teacher; Miss Lillie McCrary, assistant and others.

The crowds seemed to linger longest in the intermediate department

upstairs. Here was found the larger girls handwork and the larger boys woodwork. Miss Elizabeth Duckworth deserves much credit for the splendid display of girls handwork. Many of the girls at the beginning of the school did not know how to thread a needle. Miss Duckworth soon had the inexperienced girls making handsome sewing baskets, portfolios, beautiful cushions and other articles. Miss Duckworth also taught the girls to make beautiful figures by carving soap. These soap figures, the first attempt of the girls, would have done credit to more experienced amateur sculptresses. Miss Duckworth also gave the girls their first lessons in bookmaking. Stuffed rabbits, purses, fancy pot holders and decorated vases added to the collections.

The intermediate boys' collection consisted of well made book racks which Paul Hartsell helped them to make. Mr. W. S. Price aided in this work part of the time. Prof. Julian A. Glazener who was official teacher for the department superintended the making of the vases which were found in the workshop.

Mrs. J. B. Jones was superintendent of the intermediate department. Others in this department included Miss Eliza Henry, story teacher; Mrs. N. D. Beckman, part time story teller, Miss Margerite Maybach, handwork assistant and Mack Grogan, Bible teacher.

The handwork teachers are to be congratulated on the exhibits when it is considered that they had only about 35 minutes a day for ten days in which to complete the handwork. The remainder of the time was given to Bible study, character study, habit study, memorizing, singing and building mental pictures in the minds of the boys and girls.

Such mental pictures which would remain with the boys and girls through life could of necessity not be put on display unless one considers the long scripture quotations, the splendid songs and recitals, as a display. The demonstrations of the pupils in the commencement program plainly showed that the faculty had been as successful in teaching scripture and moral lessons as in teaching handwork.

Handwork was used not only for its practical value but for its attractiveness to the pupils. Children delight in working with things and soon tire of mere abstract teaching. Boys and girls came to the Bible school and learned many Bible lessons in many cases because they were attracted by the posters in the windows advertising the handwork and by the presentation display in Dr. Long's drug store. With this for attraction they became

# LEWIS GROGAN HAS DANGEROUS ATTACK

Lewis Fraser Grogan, 7-year-old son of Mr. and Mrs. W. H. Grogan, Jr., is reported as recovering from a serious operation which he underwent Tuesday. For a while Wednesday morning the lad's condition caused grave concern, and it is said that the boy's brother, Ralph Grogan, by giving of his blood to his afflicted brother, probably saved the young child's life.

The youth suffered an injury to his foot, presumably a cut by glass, some two weeks ago, and infection from this injury caused the lad's suffering. He was operated upon at the Lyday Memorial Hospital Tuesday, and Wednesday morning was so weakened from loss of blood that transfusion was necessary. The boy's brother, Ralph Grogan, gave the transfusion and immediately the little fellow showed signs of improvement.

Later in the day Wednesday it was found that another operation was necessary because of reach of infection to another part of the body. Little Lewis rallied from this second operation in surprising manner, and was soon resting more easily than he had throughout the day.

# SECOND SHIPMENT RED CROSS FLOUR

According to Jos. S. Silversteen, president of the local Red Cross chapter, another shipment of Red Cross flour has been placed and may be expected to arrive here in the near future.

The first shipment which was secured through the efforts of Mr. Silversteen is playing an important part in the welfare work here, as it is being distributed to a large number of families who would otherwise be entirely without flour.

Interested in the other phases of the work.

Other members of the faculty included Professor Alvin Moore music teacher for the joint junior-intermediate worship period; Mrs. Dan Merrill, pianist; Mr. Charles T. Henderson, worship period supervisor. Mr. Carl Bosse did considerable preparation work in preparation for the school. Charles Morgan also helped in a general way in preparing the handwork materials.

The school did not have a general picnic for the pupils because of the large number of pupils enrolled. However, Miss Elizabeth Duckworth took the intermediates to Glenn Canon Falls on Monday for an all day picnic.

# LET'S TRY POTATOES For A While

We believe we can handle a limited supply of IRISH POTATOES

We will, for the next few days, pay 40 cents for U. S. No. 1. Let us know what you have.

## CABBAGE and BEANS

We are in the market for Cabbage and Beans for a short time. It might be better to see us before you bring these in, and let us talk the matter over.

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- 75 Pounds Multigood Shorts ..... 80c
- 100 Pounds Red Dog Shorts ..... \$1.40
- 24 Pounds Mark Twain Flour ..... 49c

You know, there is a saving to be had here on all of your Heavy Groceries. Our Sugar prices are the best, and Lard, Bacon, Coffee, and the like are pleasing to a great many people in both quality and price.

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