

# Asheville Daily Gazette.

Vol. 4; No. 30.

ASHEVILLE, N. C., TUESDAY MORNING, MARCH 14, 1899

Price 5 Cents.

**OESTREICHER  
& CO.,**  
51 Patton Avenue.



**TUESDAY, WEDNESDAY AND  
THURSDAY.**

We place on sale, again, the "American Lady" and "Model Form" Corsets. These makes are the most popular in the trade and our Special Offer puts them in easy reach of all.

For Comfort, Durability and Price, these Corsets are at the head. Remember the 25 cent Coupons are redeemed by us as part payment on the purchase of each Corset. Many ladies have taken hold of this offer and come back to let us know they were well pleased.

Every Pair Fully Guaranteed.

**OESTREICHER  
& CO.**  
51 Patton Ave.

## Apple Pies

Do not deny yourself this healthy and favorite dish. We have plenty of apples in cans, and good ones. 3 pound cans, 10c, 3 cans for 25c. Also in gallon cans and at a price that will interest you.

**G. A. GREER,**  
WHOLESALE AND RETAIL FANCY GROCER,  
53 Patton Avenue.

## Huyler's Candies

Received today (Saturday)

Jordan Almonds,  
Burnt Chocolate Almonds,  
Salted Almonds.

Taffy, Assorted,  
Kolaes Candy,  
Marshmallows,  
Caramels.

Chocolate Peppermint,  
Bonbons and Chocolates,  
Mixed Chocolates,  
Candied Fruits.

Agency,  
**HEINITSH & REAGAN,**  
Druggists,  
Church St. and Patton Ave.  
Phone 132 when in a hurry for Drug

## CLOSING ARGUMENTS IN BREESE'S TRIAL

No Evidence Submitted by the Defense,  
and the End is Near at Hand.

The Question of Intent the Keynote of Joseph S. Adams'  
Address to the Jury for the Defendant.

Asks Court to Instruct the Jury that if Breese Appropriated  
Money but Made no Concealment of the Fact  
He Committed no Crime.

District Attorney Holton Argues that the Case Should be  
Tried According to the Facts Disclosed.

His Review of the Testimony on Which Conviction is Asked—Judge Charles  
A. Moore Argues That Breese's Only Offense was Getting the  
Notes, and that this Act Saved the Bank from  
Failure Before it Did.

In the Breese trial yesterday morning the defense announced when court opened that they were ready to proceed with the case, but would introduce no testimony. This was a great surprise as it had been expected that Major Breese himself would be placed on the stand.

Judge Moore made some explanation for not introducing testimony. He said that since adjournment on Saturday the defense had taken the ruling of the court into consideration and had determined that it would not be proper or necessary and would do no good to introduce evidence; in fact, he doubted if their evidence, under the court's ruling, would be competent.

After a discussion of a time limit for the speeches, and an agreement that there should be no limit, Judge Moore said that the defense had some special instructions it wished to ask for, and the instructions were then handed to the government attorneys for review.

Judge Funnell ruled that as the defense had introduced no testimony they were entitled to the opening and closing argument.

J. S. Adams opened the argument for the defense. He referred to the hard labor devolving upon the defendant's counsel, and said that while the jury was quietly sleeping the lawyers for the defense had not burned the midnight oil but early morning oil, and that he was almost exhausted.

"We want the defendant to be tried by men who have in their hearts the milk of human kindness," he said. "Sometimes lawyers say they do not care for sympathy for their clients. We do not say that; we want your sympathy because we think we are entitled to it."

Mr. Adams then read the fifteenth prayer for special instructions. The instructions were, in substance, that if the jury should find that the defendant appropriated the funds of the bank and it was so recorded on the books, that all officers of the bank could easily find out that the defendant had done so; that defendant was liable to civil suit; that he did not abscond, then the jury shall not convict the defendant on that charge.

If an officer of the bank should appropriate money, the proof of it had one fact was not sufficient to establish his guilt. If he had recorded all his transactions accurately and had made no attempt at deception or concealment, then he was not guilty.

"It is contended," said Mr. Adams, "that there are false entries, but there

is not a single false entry as to any amount charged to have been embezzled in the bill of indictment, not a pretense of a claim that there is a false entry in this regard. The books showing to the contrary have been introduced by the government itself. It is not charged that a single item was omitted, involved in the bill. If everything was charged on the books, and defendant held himself liable to a civil action and did not abscond, then 21 of these counts should be eliminated, I contend."

The next charge asked for was that even if the alleged misapplication was by means of a check which the defendant paid to himself or some person unknown, then you cannot find the defendant guilty on that charge, if you find that the person unknown was known to the grand jury and could have testified to that effect.

Numerous authorities were cited showing that if the government claims that the persons benefited by the embezzlement were unknown, then it must be proven that they were unknown. "We have shown on cross examination that these facts were known, and the witnesses could have been brought before the grand jury. The names of the necessary witnesses were on the back of the indictment. If the grand jury swore that these persons were unknown to them, then it follows that they were unknown to us. This is a well established principle of law. If it is allowed it sweeps out every charge of embezzlement, misapplication and abstraction, which says he paid the money to some one else. This is a broader application than first occurred to me, but I believe it is the correct one. This would sweep out all but three charges, those as to cash memorandum."

The next charge was that if the jury find that the defendant directed the teller to pay out money for "cash memorandum" checks and he gave checks to cover it then the defendant did not abstract the money by that check, and you will not convict him.

If there was any abstraction at all, Mr. Adams argued that it was by the small items themselves and not by the check, the effect of which was merely to change the form of the debt.

The question of intent was argued at length; in fact it was the keynote of the speaker's argument. He said that the defense had testimony which would prove conclusively that there was no wrongful intent on the part of the defendant, but the court ruled that there

was no wrongful intent on the part of it was not admissible. "They wouldn't let us turn on the lights; they would no let us show you that man's heart."

Mr. Adams said the defense had endeavored to show that the money drawn out had been loaned to the estate of the defendant's wards; that it was a perfectly safe transaction and the money had been returned in a day or two. Where was the evidence to show that the defendant knew he had no funds to his credit when he drew out this money?

### DISTRICT ATTORNEY HOLTON.

At the conclusion of Mr. Adams' speech District Attorney Holton opened the argument for the government. In the beginning of his argument he directed his attention to the court, and argued the proposed instructions to the jury from a legal standpoint.

"The view we take of this case is that it should be tried according to facts. We say that when we have proven that the defendant was president of the First National Bank; that he had charge of the funds; that he drew checks on the bank and appropriated the assets of the bank when he had no funds to his credit, and the bank lost them—then we have shown that the defendant is guilty. We want to take no advantage of the defendant. We want this jury to take the law from your honor's lips, not from our interpretation."

"We have shown that Breese was president of the First National Bank; that he drew out money and applied it to his own use and benefit; that at that time he had no funds to his credit; he knew according to the testimony, that he had no funds in the bank. The only fact that this jury should consider is, Did he know that he had no money on deposit. The fact that his account was overdrawn for six months, that he made reports to the bank to that effect, shows conclusively that he did know it. The whole argument of the defense hinges on intent. We maintain that the intent is conclusive. Breese had the knowledge of the necessary consequences of his own acts. The result of his acts cannot be excused on the plea of intent, when the defendant was aware of the consequence of his acts."

Mr. Holton quoted the Harper case to show that while the defendant was making desperate efforts to refund the money, but he was not excused for the wrongful use of the money in the first place. When the prohibited act is knowingly done, then the burden of showing the intent is cast on the accused. The innocent intent cannot exist when the defendant knowingly does a wrongful act. He cannot violate the law and say there were other bank officers who consented to it.

Mr. Holton had not completed his argument when the noon recess was taken.

At the opening of court in the afternoon District Attorney Holton resumed his argument. He said that he had a few decisions remaining which he wished to quote, as to knowledge and the duty of a president of the bank.

In the case of Spurr vs. United States, 87 Federal Reporter, the charge was certifying checks when to the knowledge of the defendant there were no funds back of the checks. In this case the court charged that it was not necessary for the defendant to actually know that the account was actually overdrawn. If he believed that an examination would disclose the fact that there were no funds to meet the checks, and refused to ascertain that fact; then that did not excuse him.

In Brown vs. Finn the same principle is in effect as to the deposits placed in the bank, and the contention that Breese had the right to draw out his salary when his overdrafts were large this right did not exist.

In a decision quoted by Mr. Holton

## Seed Potatoes.

Early Rose,  
Peerless.  
Burbank's  
Field and Garden  
Seeds.

All of the best variety at

**Snider's,**

On the Square

the jury was charged:

"If you find that when the defendant certified a check and had information that there were funds sufficient to meet the checks and overdrafts the jury will acquit the defendant. The word 'overdrafts' had been added by the court itself."

We contend that there is scarcely anything for the jury to pass upon except belief. If they believe the evidence then they must convict the defendant. The question of intent cannot be considered. The only question is whether the testimony is true.

The province of the jury is to find out what the facts are. Is there any controversy about any fact here? There is no dispute that Breese overdraw his account when he knew he had no funds to his credit; when he knew that the funds drawn out were a total loss to the bank. The case is complete.

Addressing himself to the jury, Mr. Holton said he had no doubt the jurors were tired of the case, but it was nearing its completion.

He told them to accept the law as laid down by the court and from no one else. Jurors have no right to complain if certain evidence is not introduced.

If such testimony ought rightfully to be introduced then the court of appeals will be a sufficient remedy for the defense.

The testimony shows that a national bank was organized twelve years ago with \$100,000 capital. The defendant was the principal officer from the start from his high character as a financier and a citizen. He has not regarded the ordinary business rules. We find that \$100,000 of capital, that \$50,000 put in by various depositors and \$20,000 on certificates of deposit which is money paid on deposit and receipts given for it, has been totally lost. We first introduced the books to show that on January 7, 1897, he drew \$351 from the bank when he knew he had no money on deposit there with which to make that check good. From thence on to the close of the bank he constantly withdrew money day after day and he had no valuable deposits to meet the withdrawals.

There was overdrawn \$1,100 when the \$351 were checked out. His counsel says he had no intent to defraud. The acts speak for themselves.

The results followed whether he intended them or not. Out of \$320,000 assets of the bank you find there is only \$400 in cash and a few notes of value left. Where did the funds go to? He used that bank just as you would use your pocketbook. He put in place of this \$250,000 notes that you wouldn't walk across the street to possess. And yet he says he had no criminal intent. He told Leonard he didn't care if the note signers were insolvent; he only wanted some worthless papers that would read like they were of value.

In addition to all of this Breese sent out false reports of the bank's condition. Such reports are asked for by the comptroller on some particular day

(Continued on fifth page.)

## OPPORTUNITY.

FOR THE PEOPLE OF ASHEVILLE.

I have made up my mind to go to Porto Rico. I will close out my entire stock at 25 per cent. less than cost. Clothing, gent's furnishing goods, hats and underwear, merchant-tailor's cloth and cloth for ladies' tailor made suits, also store pictures. Entire stock must go. I. W. GLASER, 34 South Main street, Asheville.

WOOD'S SEEDS. Wood's seeds are peculiarly adapted to the soil and climate of the South. Sold at Grant's pharmacy.

TO CURE A COLD IN ONE DAY. Take Laxative Bromo Quinine Tablets. All druggists refund the money if it fails to cure. 25 cents. The genuine has L. B. Q. on each tablet.

## Our aim.

Our aim is to give you better service than you have ever had. That we are doing this is attested by our constantly increasing trade.

**Quality**  
Is first considered with us. Price next. There is nothing made too good for our Prescription Department, for thereby hangs the success or failure of the Physician's tedious examination and carefully written Prescription.

"The Paragon."  
Opp. Post Office.  
Phone 266.  
Night Bell at Side Door.

## IN HONOR OF GOMEZ

Yesterday's Demonstration at Havana  
an Imposing  
Spectacle.

Over Fifty Thousand Persons in the Parade.

An Outbreak Threatened,  
But Prevented by an Order From Brooke.

Gomez Addresses the Crowd—Plea for a Reconstruction—Stormy Meeting Held by the Assembly.

Havana, March 13.—The demonstration in favor of Gomez and against the assembly this afternoon was an imposing spectacle. Over 50,000 paraded, shouting "Long live Gomez," "Down with the assembly."

An outbreak was threatened for a time owing to the order of the chief of police and the civil governor refusing to sanction the demonstration. Both officials were enemies of Gomez. Despite the order, however, thousands surrounded the house where Gomez was lunching, cheering wildly. The police charged the crowd, which resisted and the situation was becoming very grave when an order came from Brooke allowing the demonstration if orderly.

Prior to the order the civil governor, Menocal, had ordered the cavalry to be summoned to charge the crowd. Brooke's action occasioned a great outburst of cheering for Brooke and McKinley.

Later Gomez addressed the multitude, urging them to work with him for a reconstruction of the country.

The assembly held another stormy meeting today. Violent speeches were made against Gomez and a letter was read from General Rodriguez, second in command to Gomez, saying he would obey the assembly.

## CUBAN ASSEMBLY DEPOSES QUESADA

For Conspiring with Gomez to Accept the "Paltry Three Millions Offered

by the United States, Havana, March 13.—The assembly deposed Quesada, the Cuban representative at Washington, for conspiring with Gomez to accept the "paltry three millions" offered by the United States. The speakers declared that Quesada had been bribed by McKinley.

Captain Jerez and General Sangully will probably fight a duel tomorrow on account of the deposing of Gomez.

It is the opinion of every impartial observer that the time has come when it is imperative for the American government to end the abusive attitude of the assembly and the group of the army favoring it. If such action is not taken the chances are that the country will be plunged in a civil war.

## Do You Want Some Silverware

For Less Than It is Worth?  
We have selected out a lot of Silver-plated Ware, including Trays, Flat and Hollow Ware, which we are offering at 80 cents on the dollar. It will pay you to look these things over as they are worth 20 per cent. more than we are now asking for them.

**Arthur M. Field**  
Leading Jeweler,  
Church St. and Patton Ave.  
Asheville, N. C.

## THE WINYAH SANITARIUM.

A Special Private Institution for the  
Treatment of Lung and Throat Diseases.

KARL von RUCK, M. D., Medical Director.

RATES, \$22.50 per week and upward, according to the room selected. Includes everything excepting medicines, which are supplied at cost. A certain number of rooms are reserved at a lower rate for patients whose financial circumstances require it and to such the medicines are also included. Patients can enter and leave at any time. Advanced cases not admitted.

Winyah Hotel and Sanitarium Co.