

TELE YEARS

(Continued from First Page.) discussed in court before it was tried? "It is only another effort to convict this unfortunate defendant.

"Judge Bynum says that on July 17 Breese, Penland and Dickerson divided \$17,000 among themselves. I call your attention to the fact that on that day Dickerson deposited \$2,250 in the bank, as shown by the cash book. Why did they conceal that fact?

"Another matter Judge Bynum said ought to influence the jury considerably was that the discount register was not kept after June 2. One witness said, I don't know which, that this register was not a book of original entry.

"This statement of the prosecution is an ungenerous one and apt to deceive unless you know all the facts. Mr. Dorsett testified that every one of these notes were entered on the cash book. How plain and simple it is when we come to the real facts and how different from the accounts of the trial we read in the newspapers.

"I mention these things in order that you may understand the methods by which the government of the United States hopes to imprison this defendant.

"Judge Bynum says Breese ought to be convicted because he used money, the proceeds of a check of the Brevard Roller mills, whose account was overdrawn, when we could have shown that every cent was paid back by the Milling company.

"This defendant is not going to be convicted before breakfast. You will find that they can't run rough shod over this defendant in this regard.

"Judge Bynum said Breese had drawn out \$1,200 of cold cash every month. The newspapers and attorneys have declared that this man lived off the fat of the land.

"Another thing they tried to do was to arraign one class against another. This can't be done under our republican form of government.

"Mr. Blackburn said the defendant wore a starched shirt, while horny-handed sons of toil did not have a cotton shirt. Did it ever occur to you that horny-handed sons of toil don't usually deposit money in national banks. Why did they say this? Was it possible they thought there was a horny-handed son of toil on the jury?

"Judge Bynum said by the grace of God I will have him sent somewhere else. I denounce that in the name of Christianity as sacrilegious.

"They say there was only \$400 in the bank when it closed but the records show that on July 3 there was \$3,635.21 withdrawn, on July 27, \$4,890; on July 29, \$3,642; on July 30, \$10,425.

"County Treasurer Payne drew out \$2,000; Tax Collector Reed, \$905; City Treasurer Heston, \$1,080.80. The city drew out \$1,900 on July 23—all this money drawn out by depositors not connected with the bank after Coffin's letter was received.

"Then Major Breese sent this telegram to the comptroller of the currency: "Referring to your last letter I regret to say that my expectations have not been realized, and I beg you to come at once. Bank will not open tomorrow."

"The deputy comptroller admitted that in 1896 and 1897 something like 1,000 national banks went to the wall. Democrats and republicans must all admit that hard times were with us in 1893. We were in the midst of one of the greatest panics in the country's history. Mr. Coffin said when he came here that he was reluctant to have Major Breese give a bond publicly because he feared the result on the National bank of Asheville, which was in a shaky condition and could not meet its obligations. Finally the National bank of Asheville did go under, but its directors were wealthy men and they were able to pay their liabilities.

"The law says that the mere making and endorsing of a worthless note is not in itself a crime, if the maker believed that payment would be met.

"There is no evidence to show that at the time Breese executed the note he was insolvent.

"The lawyers for the prosecution attempted to make a great biggabo out of that, interpreting it to mean that Breese has the money now. As a matter of fact he is penniless and became so by his efforts to save the bank.

"Judge Bynum told a pitiful tale about Jenkins having to leave the state because of the judgments against him. They failed to revert to the fact that Breese pledged to Jim Russ bank stock for which he paid 100 cents on the dollar.

"No southern town ever had a boom as big as that of Asheville in 1893. As honest men who ever breathed the breath of life were in these transactions. At that time they had visions of fabulous wealth, but today they are sadder and wiser men because the great panic which swept over the country reached every county in this state.

"The flow of gold which had been coming to this country from Europe began to flow in another channel. Banks in New York began drawing in their funds. It was a terrific ordeal which bank presidents had to pass through. What could the defendant do? One thing he could do was to take the money of the bank and the other was to make an honest effort to save the bank. I know the defendant, I have known him a long time, as a thoroughly honest gentleman.

"They call the defendant a thief and a robber. How easy it is to do that. I say that he is not either.

"When the bank was in a bad condition the defendant began to correspond with the comptroller, and explain the situation. Was there any deception in that? The evidence shows that the defendant took \$47,000 and invested it in bank stock. But the government says he stole the money to do it. They have to say that to make out their case. If he intended any wrong would you believe that he would have invested his money in bank stock? Breese went to Washington and the result of his conference was that he came home and tried to establish a state bank. He got the charter of the French Broad bank. Gentlemen, are you going to convict a man for an honest effort to protect the creditors of the bank?

"I have the faith that if these defendants get the opportunity in times of returning prosperity, they will pay all their obligations.

"Breese's statement to the deputy comptroller proved that he had the confidence of innocence.

"In regard to these reports that the government introduced here. Look at one of these reports. The government claims in one breath that the defendant made this report, and in the next that Mr. Penland made it.

"Colonel Burgwyn is a cavalier. He was on the witness stand. He went through all the assets of the bank. He was a bank examiner, and the government knew through him the condition of the bank long before the bank failed.

"This letter shows that the deputy comptroller wrote that the practice of allowing overdrafts should be avoided. If it was prohibited, why didn't they say so. If they allowed this would you say that a man who would do that under the quasi-endorsement should be convicted?

"During all that time Breese had the confidence and sympathy of the United States.

"The law says that a man is not necessarily guilty because of the mere fact that he used the funds of the bank; we must go a step further and find his intent. If he willfully or wrongfully applies the funds of the bank then he is not guilty.

"The evidence of good character ought to have great weight. The undisputed evidence of a good character may be sufficient in itself to create a reasonable doubt.

"Why was the government so afraid to have this matter decided by the jury? The only thing that will injure the Federal courts of this country in the estimation of the people is the usurpation of the rights of the jury by the courts. Why go to the trouble of bringing these men here, if they are to have nothing to say in the case? I am willing to trust the jury. I am willing to trust His Honor, because he is a man who has the milk of human kindness in his soul. But this is a matter for the jury to decide. If 11 men want to convict this man and

you, the defendant can't escape conviction on all these counts, the first, second and third.

"The court charged similarly regarding the other counts under the indictment, specifying each. The court said, in speaking of one of these counts: "Now, if the defendant produced a fictitious credit by means of notes which he knew to be worthless, then that was no credit to be switched into the credit account without that fictitious credit on the books. In other words, it was no credit to the law, so that according to my recollection the checks charged in the month of March were \$907.99. At the end of the month the defendant had an apparent credit of \$663. But if you shall find from the facts as testified to that these checks were worthless and that that was draft at the end of the month was \$6,473.10.

In response to the request of the defense the court charged that "in determining the intent of the defendant in overdrawn notes that he was issued a check overdrafts as loans from the association to himself. If he did so consider then he would not be guilty, but if he did it with the intent to defraud the bank or any other person, if he did it knowingly or if he did it understanding the condition of his account—in other words if he did it with the intent to defraud the bank or any other person, just as asked in this case, then he would be guilty, other wise he would not be.

The court charged that the jury should "be careful not to confound the defendant's acts and doings which appear in the evidence admitted as to other transactions than those charged in the bill of indictment with those charged in the bill.

"You should consider the defendant's good character," said the credit, and consider it with the testimony in the case.

In conclusion Judge Purnell charged as follows: "Now, gentlemen of the jury, in conclusion of the whole matter the law, as laid down to you by the court, as I have said to you before, is supreme as far as you are concerned. In the view which the court takes of its understanding of the law and of the evidence the escape cannot see how the defendant can court conviction and while you are not bound by that opinion, while you are not bound by the opinion of the court, I say to you, as I have a right to say, that in the opinion of the court, and believe me as the court does, and believe the evidence as the court does, the defendant is guilty, and it is your duty to say so.

I say again gentlemen, that you are the sole judges of the facts. Sometimes, sometimes I say, judges have assumed the province of the jury and taken from it the decision of the facts of the case, as I have been asked to do in this. I have never, since I have been on the bench, yet assumed that province. I do not do so now. A man has a right to be tried by his peers. You are the peers of the defendant. You have been selected for this important position. You are the sole judges of the facts. If according to the law as the court has laid down to you you find the fact, and under that law as explained to you you believe the defendant is guilty of embezzlement under either count in the bill of indictment you will say so. If you believe he is guilty under the law, that the government has satisfied you beyond a reasonable doubt under the law as explained by the court that the defendant has committed the crime known as abstraction it is your duty to say so. If the government has not satisfied you beyond a reasonable doubt that under the law as the court has explained to you the defendant has been guilty of the crime of misapplication, it is your duty to say so. If you are not so satisfied you will return a verdict of not guilty. You may return a general verdict of guilty or you may return a verdict of guilty upon either one of these charges, embezzlement, abstraction or misapplication.

The court described the duties of a bank president and defined embezzlement, and said that if, while in possession of the funds of the bank as its president, he wrongfully converted any portion of the assets to his own use with intent to injure the bank he would be guilty of embezzlement.

The court charged the jury that they must be the sole judges of the facts. "I may have an opinion which may be very pronounced, but an opinion on the part of the court is not to govern the jury."

The court defined "abstraction." The taking or withdrawing of funds of the bank must be without the knowledge or consent of the bank or its board of directors. It was decided in the case of Taintor, however, that it was no defense that funds were misapplied with the consent of some of the directors, but the intent to defraud will be conclusively presumed from the commission of the offense.

The judge reviewed briefly the counts of the charges against the defendant in the indictment, and said the jury was confined in making up its verdict to them. But the other testimony, as to the conduct of the defendant before January 7, 1897, as to the condition of his accounts, as to the procurement of worthless and fraudulent notes, notes which the parties said they did not sign, that is admitted as bearing on the question of intent, knowledge and motive which the defendant had in his transactions with the bank on the days specified on the bill of indictment.

"That the defendant withdrew \$351 from the bank on the 7th day of January there can be no controversy," said the court. If he knew he had no money in the bank, if he did it by virtue of his position, and he took it with the intent which the court has explained, then he was guilty of embezzlement.

"If you are not satisfied, if the government has not satisfied you beyond a reasonable doubt that his account on that day was overdrawn \$3,534.31, that is that he had taken out of the bank on that day, before he drew that check that much money over and above what he had put in, that instead of having money to his credit he was overdrawn \$3,534.31 and he knew it, or if the evidence was there in his possession, and he shut his eyes and while he could have known it, he wouldn't know it, he took it with the intent to defraud the bank, then he is guilty under the first count. If, under the definition which the court has given you, that is if the government has not produced evidence which would remove from the mind of a man who was seeking for the truth, a man who wanted to get at the actual facts, which satisfies you beyond a reasonable doubt, first that he embezzled, you would say he is not guilty, second that he abstracted, then you would say he is not guilty, and third that he misapplied, then you would say he is not guilty. But if the evidence as introduced in this case did those things, and did it with the intent which the court as explained to

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QUEEN WILL RATIFY

Spanish Parliament to Dissolve Today—Sickles on Secret Mission

Madrid, March 15.—The queen will tomorrow sign the decree dissolving the cortes, and she will at once ratify the peace treaty. Parliament will dissolve tomorrow. The elections will take place April 15, and the new cortes will meet June 2.

It has been learned that Stanton Sickles, formerly secretary of the American legation here, has been in Madrid eight days on a secret mission.

MC KINLEY'S VACATION.

Thomasville, Ga., March 15.—McKinley and Hobart are enthusiastic over the magnificent climate here and all in the party are enjoying the balmy breeze which swept through the streets today. Today the ladies put aside their winter clothing and appeared in light spring costumes. The president looks pale and shows great need of rest. Secretary Platt of New York and Herman Kohlsaat of Chicago, are expected here soon for a political conference with the president.

FOR WATER SUPERINTENDENT.

Editor of the Gazette. Among the several announcements of candidates for superintendent of waterworks that are to come before the democratic convention, I notice the name of Mr. J. B. Erwin. On account of Mr. Erwin being a very quiet and unassuming man he may not be as generally known as some of the other candidates, but he is known by a number of our best citizens, and a more honest or trustworthy man cannot be found for this responsible position. Again he is an uncompromising democrat and for years has worked faithfully in our city elections for the success of his party. All things being equal is it not right to reward party fealty? I believe it is, and I feel sure his nomination will give satisfaction to the citizens of Asheville, and if elected he will undoubtedly conscientiously perform all the duties required of him.

A DEMOCRAT.

LOOK OUT FOR THE FIRST SIGNS OF

Impure blood—Hood's Sarsaparilla is your safeguard. It will purify, enrich and vitalize your BLOOD.

ANNOUNCEMENT.

I hereby announce myself a candidate for the position of chief of police of the city of Asheville, subject to the Democratic nominating convention. Nicholas A. Collins.

NEW SPRING ARRIVALS

Clothing Dept. Our Spring Stock is arriving July, and we have some of the prettiest Double Breasted Serge Suits, silk faced or plain, that you ever saw. The prices range from \$10 to \$15

Hat Dept. We received today our Knox and cheaper grades of Straw Hats and they are beauties. The styles are new and attractive. Don't fail to see them, as you know a Knox hat is always

The Correct Thing. Shirt Dept. Our line of Shirts is also complete now, and range from 50c to \$1.50, in Soft Shirts, without Collars, Negligees, with Collars and White Shirts, from size 12, boys', to 18 men's

Tailoring Dept. Don't forget that our Tailoring Department is ready to make your Spring or Easter Suit, from our New Piece Goods for Spring, which are very Nobby.

Remember We Guarantee Our Work and Fit Second to None.

The Whitlock Clothing House. 41 Patton Ave.

The Equitable Life ASSURANCE SOCIETY OF THE U. S.

Table with columns for Outstanding Assurance, Dec. 31, 1898, \$987,157,134.00; Assurance Applied for in 1898, 198,362,617.00; Examined and Declined, 30,318,878.00; New Assurance Issued, 168,043,739.00; Income, 50,249,286.78; Assets Dec. 31, 1898, 258,369,298.54; Assurance Fund (\$198,898,259.00) and all other liabilities (\$2,160,550.27), 201,058,809.27; Surplus, 57,310,489.27; Paid Policy holders in 1898, 24,020,523.42

H. B. HYDE, Pres., J.W. ALEXANDER, V-P, FRANK W. DANNER, Gen'l Agt. N. C. and Richmond, 920 E. Main St. Richmond, Va., J. R. GRAHAM, Agent, Asheville, N. C.

Bargain Counter. The Ladies will find on our Bargain Counter, Button Shoes, size 2 and 2 1/2, on B widths at 75 cts., a pair. The quality of the above goods is all right, they are old stock, and we are wanting to get rid of them at the above low price. Ladies with small narrow feet can always find bargains in button shoes at our store. J. D. Blanton & Co. 39 PATTON AVE.

DISGUST AT SANTIAGO

Criticisms by Americans and Cubans--Assembly Denounced--Gomez Upheld.

Santiago, March 15.—All classes here are utterly disgusted over the present situation. The Americans contend that the Cubans are wholly unfit for self government, while the Cubans contend that Brooke's administration is wholly a failure.

Ten thousand Cubans held a mass meeting last night, denounced the assembly and upheld Gomez.

DeWitt's Witch Hazel Salve Cures Piles, Scalds, Burns