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Judge Boyd Overrules Affidavit of Plaintiff

Misses Gilbert Asked for Another Judge to Hear Suit Against Hopkins—Affidavit Held to Be Insufficient—Trial Is Set For November Term of Federal Court Here.

In the federal district court yesterday Judge James E. Boyd held that the motion by affidavit of the plaintiffs in the suit against W. R. Hopkins and others for trial before some other United States judge was not proper in substance and had not been filed within the time specified by law. The court thereupon set the case for trial on Thursday of the second week of November.

When the Gilbert-Hopkins case was called for consideration Judge James H. Merrimon of counsel for the plaintiffs stated to the court that his clients had filed an affidavit alleging that the presiding judge was biased and prejudiced in respect to the subject matter of the lawsuit and that they could not obtain a fair trial in his court. Judge Merrimon said that as he understood the statute applying to the question the filing of this paper left the court no other course than to have some other judge designated to conduct the hearing of the action.

Foster A. Sondley, of defendant's counsel, read an affidavit from W. R. Hopkins, the defendant, to the effect that many of the facts set forth in the plaintiffs' affidavit were contrary to the facts in the case and that furthermore the instrument was not filed within the time specified by law.

After hearing arguments by counsel Judge Boyd made a statement expressing his views of the questions involved and setting aside the affidavit as insufficient for securing trial before some other United States judge.

His honor said that he had presided as a federal judge for more than 15 years and that in all that time he had endeavored to give all litigants a fair and impartial trial, holding the scales of justice evenly. That if after these years he was capable of bias and prejudice he had never been the proper man for the position he occupied. He reviewed the course of the case in the federal courts saying that after it came back from the circuit court of appeals for a new trial he felt that the plaintiffs would consider, being women and unfamiliar with legal procedure, that they had small chance of success before the judge who had, in the language of the affidavit, decided points of law against them in an emphatic manner. Judge Boyd said that his letters to Judge Merrimon bore him out in the statement that he felt sympathy for the Misses Gilbert and that he was glad that these letters had been attached to the affidavit.

Not Filed in Time. The presiding officer of the court then explained that according to his construction of the law the affidavit must set forth bias toward some of the parties to the suit. He declared that if expressing emphatically an opinion as to points of law disqualified a judge there could not be found a judge in the United States who was qualified to sit on a case. Since the affidavit asserted bias only as to the issues in the suit Judge Boyd held that it was insufficient in form and as it had not been filed ten days before the time for the opening of the court term it could not be considered legal.

This case is a companion suit to the one tried for the second time at the May term of federal court in which the plaintiffs established their claim to part of a 12,000 acre tract in Cherokee county in possession of W. R. Hopkins and others. The boundary now in question lies in Graham county and consists of about 30,000 acres of valuable timber land. In the first trial before Judge Boyd the defendant won and on appeal to the circuit court the plaintiffs secured a new trial.

Following the disposition of the Cherokee county part of the law suit at the May term this year the present action was set for trial Monday, August 23. It is now postponed to the November term of court.

On account of the value of the property involved and the many interesting points of law brought out in the course of the trials these cases have attracted great attention. The issues have been contested stubbornly by some of the ablest lawyers in the state. Among counsel in court this morning were Judge James H. Merrimon and J. S. Adams for the plaintiffs and Foster A. Sondley, General Theodore F. Davidson, Senator Zebulon Weaver and Congressman James J. Britt for the defendants.

ADMIRAL FISKE INVENTS AERIAL TORPEDO BOAT



REAR ADMIRAL BRADLEY ALLEN FISKE.

Washington, Aug. 21.—The navy department, it is said, is keenly interested in an aerial torpedo boat for attacks on ships in protected harbors, projected in patents just issued to Rear Admiral Bradley Allen Fiske, now attached to the navy war college, but formerly aid for operations to Secretary Daniels.

The plan contemplates equipping a monster aeroplane similar to a number now under construction in this country for the British government with a Whitehead torpedo of regulation navy type.

Swooping down at a distance of five sea miles from the object of attack, the aircraft would drop its deadly cargo into the water just as it would have been launched from a destroyer. The impact with the water sets the torpedo's machinery in motion and it is off at a speed of more than forty knots an hour toward the enemy's ship.

It is said to be possible to control the torpedo by radio waves, one aeroplane carrying the torpedo and another the wireless controlling apparatus.

It is pointed out that Admiral Fiske secured patents on such a method of control in 1900, when he was a lieutenant commander in the navy.

Postponement.

The ice cream supper which the Junior Philathea class of the North Asheville Methodist church had planned for tonight on the lawn of the church, has been postponed until next week. The exact date will be announced later.

Don't buy soft wheat flour because you think it is cheaper. If you just wish to fill up a hole, and of course it is cheaper and lasts longer. Larabee's Best Flour contains twenty-five per cent more nutrition than soft wheat flour. 142-71

CARD OF THANKS.

Dr. and Mrs. E. J. Durham desire to express in this manner their sincere appreciation of the kindly words and messages of sympathy which they received from friends and neighbors upon the occasion of the recent sudden accidental death of their dear son Charles William Durham. To them and to all those who sent the beautiful flowers as tokens of love for our boy we extend our most grateful and heartfelt thanks. DR. AND MRS. BENJAMIN J. DURHAM and Mrs. BENJAMIN J. DURHAM

Many Injured by Storm In Hospitals of Houston

Houston, Aug. 21.—Evidence of the unusual destructive powers of the recent hurricane is to be seen in the Houston hospitals which house between 50 and 100 persons who were either injured by the storm or are suffering from illness contracted from long exposures. Most of the patients are from the little towns on the coast.

Among all the injured possibly the most remarkable ailment is snake-bite—a real danger in the coast hurricane, because the water drives the snakes upon the few objects above water available for keeping afloat.

Marvin Proctor of Lynchburg is in a serious condition because of a moccasin bite. With his baby he was driven into the water and was trying to build a raft from the boards of his house when the snake bit him on the hand. He carried the baby until Wednesday morning, although his arm was swollen to twice its normal size. On Wednesday he was picked up by a launch.

Submarines Sink Two Other British Steamers

New York, Aug. 21.—Advice received yesterday brought a report that the White Star liner Bovio had been sunk by a torpedo from a German submarine. The Bovio was employed in the Australian service. She was a vessel of 6,500 tons register.

London, Aug. 20.—The Swansea Leader reports that the British steamer New York City has been sunk. The members of the crew were saved.

Christiania, Aug. 20.—A German submarine stopped the Norwegian mail steamer Irma in Norwegian territorial waters yesterday, but the timely appearance of a Norwegian torpedo boat prevented further interference.

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ANNUAL OUTING TO THOMASVILLE SEPT. 6

That the excursion that left Asheville Wednesday for Atlanta City is the largest and most popular ever conducted from this territory to the seaside resort was the statement today of Division Passenger Agent James H. Wood. Mr. Wood accompanied the special train as far as Washington, returning to the city yesterday afternoon.

Another popular outing for Asheville people is announced for September 6, on which date the Baptists of this section will visit Thomasville. A special train will be operated by the Southern Railway company for the one day excursion for the members of that denomination in western and Piedmont Carolina.

The children at the Thomasville orphanage will give a concert for the visitors and the farms, dairy and grounds will be inspected. The Baptists take great pride in the work done at Thomasville and it is expected that a large crowd will go down on September 6 for the pleasure and instruction of the trip and to encourage the children and those in charge of the institution.

MURDER CASES REMOVED TO McDOWELL COUNTY

Brevard, Aug. 21.—The matter of fixing bond and considering the transfer of the case of Wave Allison and Vellie Parker, charged with the murder of J. W. Clayton, to another county, was taken up by Judge Harding in Superior court last week and disposed of by setting the appearance bond of the defendants at \$5,000 each and transferring the case to McDowell county.

The attorneys for the defense stubbornly resisted the removal of the case from this county. The state based its motion for removal on the fact that in two trials a verdict could not be had and that the case had been discussed so much that an impartial jury could not be found in Transylvania county.

This case has been followed with a great degree of interest by the people of Transylvania county, and on account of the extended circle of relatives and promiscuous discussion of the case it has been somewhat difficult to select a jury according to the requirements of the attorneys representing the defense, the state and the state's association.

JEWISH NEW YEAR TO BE KEPT SOON

Rosh Hashanah Will Be Celebrated This Year, Sept. 9.—the History.

Rosh Hashanah, the Hebrew New Year, will be celebrated this year September 9 and ten days later, September 19, Yom Kippur, the day of atonement, will be observed. As is the custom special services will be held in the Jewish synagogues. Jews all over the world observe these holy days. Rosh Hashanah is one of the most solemn feasts of the Hebrew religion.

In the Jewish tradition, the Rosh Hashanah marks the anniversary of the creation of the world, supposed to have taken place 5,776 years ago. The present Rosh Hashanah therefore, will mark the beginning of the year 5776.

The change of date, however, is of little or no importance, and if the Jewish New Year's day had no further significance, its appeal to the Jew would be very faint indeed. It is not the change of the year, but the change of life, that this day stresses, that makes it stand out as one of the holiest days in the Jewish calendar. Herein it radically differs from the civil New Year; it is a day set apart for introspection and self-examination.

The sacred character of this day is implied in the two other names by which it is known, viz, the day of memorial and the day of the blowing of the trumpets. In the first place it is the day of memorial, or remembrance. As such, it calls upon the Jew to remember the divine purposes of his life; secondly, it is the day of the blowing of the trumpets. Its purpose is to rouse Israel from his self-complacency and stir him to high resolves and nobler deeds.

The Rosh Hashanah derives its significance from the fact that it is but the introduction to the day of atonement which follows ten days later. "Before we can realize the need of atonement," says a statement, "it is necessary that he become conscious of his shortcomings; for so long as we imagine ourselves whole, it may never occur to us that we need a physician; so long as we do not admit our sinfulness, we shall hardly feel the need of being forgiven. Hence, to make this atonement possible, we must have Rosh Hashanah, which is also designated as the

Yom Hadin—the day of judgment—the day whereon we weigh ourselves in the balance, and perforce, find ourselves wanting; for there is no righteous man upon earth that doeth good always and sinneth not." The essential ceremony of the services in the synagogue on Rosh Hashanah is the blowing of the trumpet, in accordance with the injunction in

Leviticus 23:24, which reads: "In the seventh month, on the first day of the month, shall ye have a Sabbath, a memorial of blowing of trumpets, and holy convocation."

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Funeral Services Over Frank Held in Brooklyn

New York, Aug. 21.—The body of Leo M. Frank, who was lynched near Marietta, Ga., during the early part of the week, was buried at Mt. Carmel cemetery in Brooklyn yesterday. The auto-hearse and the cars which carried the immediate relatives of the dead man traveled at a high rate of speed over the six miles route from the home of Frank's parents to the cemetery in a vain effort to elude newspaper men and photographers.

Frank's parents, the widow, and his sister, Mrs. Otto Stern, and her husband, occupied the automobile which followed the hearse. A dozen other relatives and friends were in three other machines.

A crowd of scarcely more than a hundred had gathered in front of the Frank home from which the body was taken at 9:10 o'clock and 20 minutes later the hearse had arrived at the cemetery. The services lasted only a few minutes.

About forty curious people were in the cemetery and they crowded during the services.

Perfect order was maintained both at the home and at the cemetery and at both places the police had nothing to do.

Mrs. Lucile Frank, the widow, appeared calm and restrained until the

services were concluded; then she collapsed and was carried to an automobile.

SHAKESPEARE STILL POPULAR IN GERMANY

Berlin, Aug. 21.—The newly issued German Shakespeare Society's yearbook shows that 983 performances of Shakespeare's plays were given in Germany in 1914. There was a sharp decrease in July, but the theatrical neutrality gained the day and the end of the year found the usual number of performances being given. "As You Like It", led with 129 performances. "The Merchant of Venice" was second, followed in order by "Hamlet," "Richard III," "Ortello," "Midsummer Night's Dream," "Romeo and Juliet," "Taming of the Shrew" and the "King Lear," "Coriolanus" and "Love's Labor Lost" each had but one production. Berlin theaters had 354 of the 983 productions to their credit.