

THE WEATHER TO-DAY:  
For North Carolina:  
FAIR.

# The News and Observer

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## Leads all North Carolina Dailies in News and Circulation

### FINCH'S CHARGES ARE UNFOUNDED

#### President Bryan Makes Demurrer and Answer in Atlantic and North Carolina Railroad Receivership Matter.

#### NOT A STOCKHOLDER

So it is Declared of Finch. The Desire of Various Parties to Lease it Prove that the Road is Not in the Bad Condition Described--If so, Why Did Finch Invest His Money? Contracted for Stock to Put the Road in the Hands of a Receiver.

Judge Simton will be in Raleigh on March 10th to hear the application of the owners of the Atlantic and North Carolina Railroad to control their own property, for that is the plain issue that is involved. He has requested Judge Purgell to sit with him. Most of the officials and attorneys of the road are confident that, when the issue is clearly presented and the facts before the court, the receivership will be closed and the property turned back to the management of its owners.

Yesterday the attorneys for the State and the Atlantic and North Carolina Railroad filed their demurrer and answer. Usually court pleadings are read and not interesting to the business man not posted in legal phrases. But the answer in this case is different. It is a clear and direct answer to the allegations of Finch, showing that he had no right to ask the appointment of a receiver in the first instance, and that the road is in such good condition that various parties wish to lease it, and that all the allegations in Finch's application are either erroneous or misleading and based upon unsupported rumor.

Because of the far-reaching importance of this matter below is printed the full text of the demurrer and answer. The full text of the application has already been published. The demurrer and answer are as follows:

In the Circuit Court of the United States for the Eastern District of North Carolina.

Sitting in Equity in Raleigh, K. S. Finch, in behalf of himself and of all the other stockholders of the Atlantic and North Carolina Railroad Company, Complainant, against The Atlantic and North Carolina Railroad, Defendant.

The demurrer and answer of the defendant the Atlantic and North Carolina Railroad Company to the bill of complaint, filed in the above entitled cause.

#### THE DEMURRER.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demurs to the said bill. And for causes of demurrer, shows:

1. That it appears by the said bill, that he is not entitled to the relief prayed by the bill against this defendant.

2. That it appears by the complainant's own showing by the said bill, that he is not entitled to the relief prayed by the bill against this defendant, for that:

1. It appears from said bill that it is brought by an alleged stockholder in the defendant corporation against the corporation founded on a right which might be properly asserted by the corporation, and does not contain an allegation that the complainant was a shareholder at the time of the transaction of which he complains, or that his share devolved on him by operation of law since the commission of said acts, and it does not appear that the suit is not collusive to confer on a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

(2) The bill of complaint does not set forth with particularity the efforts of the complainant to secure such action as he desires on the part of the managing directors or the shareholders and it does not appear that the suit is not collusive to confer on a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

(3) For that it does not appear from the bill of complaint that the defendant corporation or its directors have been requested to bring any suit on account of the matters and things alleged in the said bill of complaint and that they have refused so to do.

#### THE ANSWER.

And the defendant answering the bill of complaint filed in the above entitled cause, says: Saving and reserving to themselves the benefit of all exceptions to the errors and imperfections in said bill contained, for answer to so much thereof as they are advised is necessary or material for them to answer unto, do aver and say:

1. That the allegations contained in paragraph one of the bill of complaint are true.

2. That it is not true, as alleged in paragraph two of said bill of complaint, that the amount in controversy in this suit is of more than \$2,000 in value, exclusive of interest; but on the contrary, defendant avers that the sum or value of the amount in controversy in this suit does not exceed \$1,575, and if the receivership is continued in this cause, will grow continuously of less and less value.

### THE BULL OF THE BRUSHIES ROARS

#### Figuratively He Tosses Blackburn Sky-High.

#### WHO IS THE COWARD? A Charge of Unfaithfulness Directed Against the Zig-Zag Monarch of the Peaks Arouses Him to Make a Stinging Reply.

(Special to News and Observer.) Asheville, N. C., March 4.—Judge B. F. Long, of Statesville, is holding the present criminal term of Madison County court. There are nine murder cases on the docket, but they will not all be tried at this term.

The murder trial of State vs. Fred Avery is in progress here today. Avery, a colored boy, killed another negro named Joe Bryant at Hot Springs on Saturday, January 16. After the shooting Avery was arrested and taken to the Marshall jail for fear that the negroes would attempt to lynch him. It was said at the time that the feeling against Avery was intense and that had he not been removed he would never have been tried by a court.

The grand jury at Marshall yesterday returned a true bill against the Southern Railway Company and the Southern Express Company, who are charged with violating the law by receiving packages of liquor for delivery in Madison county. The case was first tried before a justice of the peace several weeks ago and a bill was sent before the grand jury with the result that a true bill has been found. It is not known whether or not the case will come up for trial at this term of Madison court.

About a year ago the postoffices at both Waynesville and Canton, in Haywood county, were entered and robbed of hundreds of dollars' worth of stamps and other government property, the offices at Waynesville being the heaviest losers. About a month ago or nearly a year after the robbery occurred, the children

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(Special to News and Observer.) Statesville, N. C., March 4.—The fight for Republican nomination as a candidate for Congress in this district grows warm. Yesterday ex-Congressman Linney was here and the News and Observer reporter asked him if he had seen the statement made by Spencer Blackburn at Lenoir last week when the latter said that Linney had not been faithful to his party, and was responsible for his defeat by Congressman Klutz in the last election. As soon as Linney read what Blackburn had said he flushed up and said to your

correspondent: "Come in the hotel and I will dictate a report." He did so and as follows: "There are two sorts of warfare, one a war of bayonets, the other of opinions. The lowest human being in the street-gutters can be trained to make good bayonet bearers; still it requires superb courage to make a formidable army of bayonets. When Generals Joe Wheeler and Shafter were resting with their arms in front of the Spanish at Santiago, if Shafter, upon the approach of the army, had thrown down his flag and Wheeler had courageously and defiantly kept his up, Wheeler would have been canonized as a saint, while Shafter would have been shot for his dastardly conduct."

In the last campaign for Congress in this district Mr. Klutz spoke at Jefferson, the home of Mr. Blackburn, to a vast audience, supposed to be two thousand voters. At the urgent request of our executive committee I went to Jefferson and followed Mr. Klutz in a speech of an hour and a half, while Mr. Blackburn, it was said, was off on some little creek in his own county.

"At the close of my speech the Hon. Hugh Wilburn, himself a courageous patriot with a great following, came upon the stand and as patriotic as I, congratulated me. Had I been the color-bearer of my party and Mr. Klutz or any other Democrat in the State of North Carolina had challenged me at my own home and I had refused I would have been in the position of Shafter in the illustration given and would have been court-martialed and shot for desertion as a party leader."

Yet Blackburn, my loyalty to the party, News, questions my loyalty to the party. I voted for him and remain loyal to his party.

"If I am the candidate of the party and the State Executive Committee finds it necessary for Mr. Blackburn to meet my antagonist, I shall gracefully doff my hat and turn over to him the party colors upon the grounds that am too cowardly to bear the colors of my party or to bear the colors of intelligence enough to meet the foe."

### SPRING BUSINESS SPRINGING HIGHER

#### Despite Exalted Price and Prone Mercury.

#### RETAILERS UP TO EYES Plans Operated for Numerous Brightening Operations. Prospects Brighten Out by the Golden Gate Where Much Needed Rain Has Fallen.

(By the Associated Press.) New York, March 4.—R. G. Dunn & Company's weekly review of trade tomorrow will say: Business continues to improve despite the difficulty of low temperature and high prices. Weather conditions have been singularly unpropitious, deep snow retarding distribution of merchandise and excessive cold delaying the opening of spring trade and structural work. Yet retailers are making extensive preparations and plans are submitted for numerous operations. Prospects have improved on

the Pacific coast, where much needed rain has fallen, and reports from the South indicate exceptional prosperity. Buyers continue to arrive at the leading markets, but the volume of trade is restricted by high prices, particularly for cotton goods. Railway earnings for February were 2.2 per cent. less than last year, but weather restricting traffic.

An abundance of buyers in the dry goods market failed to produce any large volume of business, although there is a disposition to advance bids. Recovery in the raw material corrected whatever tendency there was last week to make concessions on forward business, and the average of cotton goods is at the highest point of the season. This naturally checks operations for the future, particularly in export trade, which is very dull.

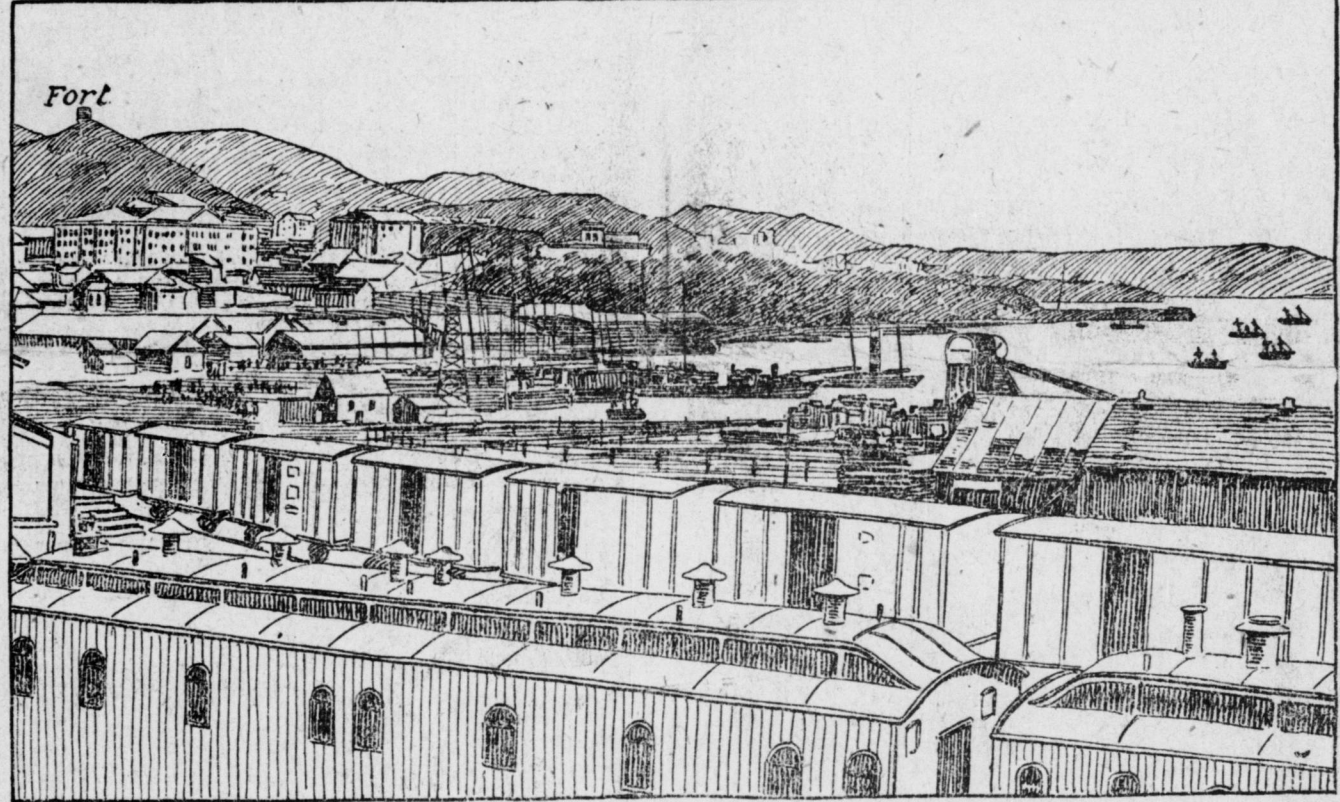
Failures this week in the United States are 226, against 229 the corresponding week last year.

#### COMPARATIVE COTTON STATEMENT.

New York, March 4.—For the week ending Friday, March 4th, 1904: Net receipts at all United States ports during week, 72,297; net receipts at all United States ports same week last year, 149,935; total receipts since September 1st, 6,438,460; total receipts to same date last year, 6,716,070; exports for the week, 96,456; exports for same week last year, 159,170; total exports since September 1st, 4,906,240; stock at all United States ports, 577,129; stock at all United States ports same time last year, 797,146; stock at all interior towns, 328,874; stock at all interior towns same time last year, 291,541; stock at Liverpool same time last year, 640,000; stock of American cotton for Great Britain same time last year, 216,600.

#### COTTON RECEIPTS.

New York, March 4.—The following are the total net receipts of cotton at all ports since September 1st: New Orleans, 2,191,542; Mobile, 187,373; Savannah, 1,712,108; Charleston, 145,448; Wilmington, 215,568; Norfolk, 416,840; Baltimore, 22,224; New York, 32,597; Boston, 16,681; Newport News, 11,048; Philadelphia, 451; Brunswick, 89,683; Pensacola, 110,214; Port Ar-



GENERAL VIEW OF THE TOWN AND HARBOR OF VLADIVOSTOK.

The town of Vladivostok, against which the Japanese appear to be getting ready to make a combined attack by land and by water, is the eastern terminus of Russia's Transiberian railway. It is admirably located for defensive purposes, and with the same amount of money expended upon it might be made as nearly impregnable as Port Arthur, although it, of course, lacks the strategic advantage given to Port Arthur by the Liautong peninsula. The fort on the high hill at the extreme left is equipped with very heavy guns and can easily sweep the entire harbor. Each of the hills farther to the right and each point of land is furnished with a fort or a battery, as Russia regards Vladivostok as being of greater importance to her even than Port Arthur.

### Suit May Follow Small Pox Scare.

(Special to News and Observer.) Oxford, N. C., March 4.—Considerable interest was aroused here yesterday by the detention of a passenger who boarded the train at East Durham en route for Dabney. The man had an eruption on his face which aroused suspicion of a doctor at Stem, who telegraphed to Dr. Sam Booth to meet the train at Oxford depot and find out whether the man had small pox or not.

Dr. Booth met the passenger and escorted him to his office up town and pronounced the eruption a simple eruption different from smallpox. In consequence of the detention here, the man failed to make connection for Dabney and threatened to bring suit against the town of Oxford.

### National League Schedule.

(By the Associated Press.) New York, March 4.—With the adoption and announcement of the schedule of playing dates for the season of 1904, the representatives of the National League baseball clubs finished their annual spring meeting this evening. The National League schedule was given out tonight. Like the American National League has arranged what is known as a "three trip" schedule, the eastern clubs making the initial trip first to western territory. The season will open on Thursday, April 14, and close October 8.

A woman dresses to please others and eats to satisfy herself.

### OVERMAN STIRS A "SAINT" TOWRATH

#### "I Am No Spotter," Hisses President Smith.

#### AS TO PLURAL WIVES SS Smith Seemed to Regard Overman's Question as an Attempt to Intrude into Mohammed's Paradise Where Houris Smile.

(By the Associated Press.) Washington, March 4.—Interest in the investigation before the Senate Committee on Privileges and Elections of the protests against Senator Reed Smoot, of Utah, was unabated today, although much of the time was devoted to putting in documents subscribed to as the law of the Mormon Church. In that connection President Joseph F. Smith, who again was on the stand, testified that if the principle of plural marriage should be attacked it would be defended by the church.

Intense feeling was exhibited by President Smith against individuals, who, he said, had spied on the domestic and mutual relations of the high officials of the Mormon Church, and for that reason he had favored the passage of the Evans' bill to prevent prosecutions for polygamy on co-habitation, unless complaints were entered by husband, or wife against the other. This bill was passed, but vetoed by the Governor of Utah.

It was brought out that all of Mr. Smith's predecessors, as presidents of the Mormon church, had been polygamists, and the man chosen to succeed him had more than one wife. Mr. Smith was asked which he would obey, the law of the land or revelations from God, if the two were in conflict. He said he might obey the revelation, though it was not compulsory.

Reading from the Desert News of June 28, 1903, regarding a speech by Mr. Smith at the Weber State re-union, Mr. Taylor asked Mr. Smith if he as correctly reported in saying that the doctrine of plural marriages was a revelation by God to Joseph Smith, Jr., and to reject that would be equivalent to a rejection of God himself. Mr. Smith explained that his address at that time was intended to correct the impression that Brigham Young had inaugurated the practice of plural marriages, and to show that the doctrine originated with Joseph Smith. It was a matter of history and not of teaching.

Mr. Smith said he had avoided teaching polygamy, but that the Woodruff manifesto had not in any manner changed his convictions on the questions of plural marriages.

Senator Hoar asked why he had avoided practicing what had been held to be a divine command, and the witness answered that it was the cause of the more recent manifesto stopping the practice.

Senator Beveridge desired to know whether the church considered that the laws were being obeyed when polygamous co-habitation had continued since the manifesto of 1890, and Chairman Burrows made the question more personal. He said: "You have said today that you were obeying the laws in not teaching polygamy since the manifesto. Do you think you were obeying the law in having eleven children from different mothers since that time?"

"I obey the law so far as teaching is concerned. I have not said that I have obeyed the law in my practice. Polygamy has not been taught in the church, by any of the officials. The church has obeyed the laws even if I have not," said Mr. Smith.

Senator Fraker asked whether the practice of polygamy was permissive or compulsory.

Mr. Smith called for a copy of the book of doctrine and covenants and read a part of the revelation, which he said, had been accepted in the nature of permission to take plural wives and was not mandatory upon the members of the church.

Senator Overman asked Mr. Smith if he knew whether any one of the six polygamist apostles had disobeyed the law in regard to polygamous co-habitation since the manifesto of 1890.

"I do not know," said Mr. Smith. "I only know that they were in the same status of polygamy at the time of the manifesto as I was myself. I do not pry into their family affairs. I am happy to say that I am not a spotter or an informer. I am not a paid spy."

"You might know without being a paid spy," persisted Senator Overman. "I know nothing about it. As I have said before, I am not a spotter or informer," answered the witness. The words "spotter" and "informer" were hissed rather than spoken.

"Neither am I a paid spotter or informer," retorted Senator Overman. "Yet I know that in my town people have children. I think you should answer that question without using the words 'spotter' and 'informer' in that manner."

"I beg the Senator's pardon," the witness responded.

Senator Dubois asked several questions to determine the correctness of the statements that not more than three or four per cent of the Mormons were polygamists and said he believed he could show that a greater per cent than that had been

### TO BUILD A CHURCH

#### Plans for a Six Thousand Dollar Building.

#### Lumberton Will Also Build a Two Thousand Dollar School House.

(Special to News and Observer.) Lumberton, N. C., March 4.—Plans for a \$6,000 Methodist church for this place have been accepted and work on it will begin shortly. The old church and lot will be sold. The parsonage will be moved back and the new church built on that lot.

An acre of ground has been purchased in North Lumberton by this public school district, on which a school house will be erected. It will be a two-story frame house, commodious and modern, to cost about \$2,000. It is proposed to make it a permanent school.

During the month of February twenty-six marriage licenses were issued by Register of Deeds J. N. Buie.

Dr. R. M. Norment has been appointed postmaster at this place.

On the 27th ult. Ralt Swamp Farmers Alliance No. 44 was re-organized. The following officers were elected: President, Mr. J. A. Boone; Vice-President, Mr. W. K. Culbreth; Secretary, Mr. J. W. Lowe; Treasurer, Mr. M. F. Hodges; Chaplain, Mr. Furney Davis; Lecturer, Mr. J. E. Carley; Doorkeeper, Mr. Stephen Davis.

The Lumberton Cotton Oil and Ginning Company will be located about one mile west of here on the Carolina Central Railroad in the angle of land lying between the Harleesville public road and the Carolina Central Railroad. The first call for installments on stock have been made.

### EX-CONVICT TAKEN.

#### Chief of Police Karcher Captures Gus. Long Under Exciting Circumstances.

(Special to News and Observer.) Statesville, N. C., March 4.—Chief of Police Karcher, accompanied by Mr. E. Daniels, facing the point of a pistol, arrested Gus Long, an ex-convict at his home about two miles south of Statesville, yesterday. Long was convicted in October, 1900, in Yadkin county, and sentenced to five years in the penitentiary. In July, 1903, he escaped and has lived around here ever since. The penitentiary authorities were notified and Guard Ewing arrived this morning to identify Long. While going through the jail he recognized another convict, Will Smith, sentenced from Johnston county. They were both taken back tonight.

Smith was serving a term here for burglary.

### Has His Foot Crushed Off.

(Special to News and Observer.) Monroe, N. C., March 4.—Mr. Elmore Funderburk, a constable of Buford township, got his foot caught in the carriage of his saw mill today and had it crushed off.

(Continued on Page Five.)