

The News and Observer.

Weather Yesterday
Maximum temperature, 72; minimum temperature, 56; total precipitation for 24 hours ending 8 p. m., .38 inch.

Weather Today
Forecast for North Carolina: Unsettled Wednesday and Thursday with showers, light northeast to east winds.

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RALEIGH, N. C., WEDNESDAY MORNING, SEPTEMBER 8, 1909

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Leads all North Carolina Dailies in News and Circulation

NO FURTHER WORD COMES FROM PEARY

Now Homeward Bound on the Roosevelt

LACK OF WIRE FACILITIES

It is Uncertain at What Port He Will Touch to Apply His Meagre News

(By the Associated Press.) Robert E. Peary, having "nailed the Stars and Stripes to the pole," on April 6, 1909, as told in his series of messages flashed by wireless yesterday from the coast of Labrador, is figuratively lost to the world tonight, homeward bound on his ship, the Roosevelt.

At Copenhagen, Denmark, royalty continues to pay homage to Dr. Frederick A. Cook, the Brooklyn explorer, who announced 8 days ago in a manner not unfamiliar to Commander Peary's that he had unfurled the flag of his country at the pole on April 21, 1909. Neither saw indications of the other's achievement; both will be in the United States before the close of the present month.

Commander Peary on the Roosevelt, according to best reckoning, was in the vicinity of the Strait of Belle Isle, between New Foundland and the Province of Quebec, tonight. It is uncertain at what port he will touch first to apply the meagre news of yesterday. Inadequate telegraphic facilities on the Labrador coast and the northwest coast of New Foundland move him to decide to proceed on southward to North Sydney, Nova Scotia, before he gives to the world details of his triumph in the far north.

Commander Peary had intended stopping at Chateau Bay, Labrador, possibly tonight, but the telegraph station there was abandoned some time ago and the Roosevelt's mast could not be seen further south. The world obtains the news as the comes down New Foundland coast, Red Bay, and further south, St. George Bay, are at the Roosevelt's mast could not be seen further south. The world obtains the news as the comes down New Foundland coast, Red Bay, and further south, St. George Bay, are at the Roosevelt's mast could not be seen further south.

With her husband's plans uncertain and with no message to meet him, Mrs. Peary is waiting at her home at Eagle Island, Maine, in readiness to depart for North Sydney.

Herbert L. Bridgman, secretary of the Peary Arctic Club, New York, for North Sydney tonight, in addition to greetings from the Peary Arctic Club, Mr. Bridgman carried the messages from the Peary Arctic Club, of which the commander and Dr. Cook are both members.

"The Explorers' Club sends you heartfelt congratulations upon your triumphant attainment of the long-sought goal—the north pole."

Several additional messages, filed Tuesday at Indian Harbor, were received by associates of Commander Peary today, but none of them gave any further details of his conquest.

Through Mr. Bridgman he notified all geographic societies of the world of his discovery and in addition sent a personal dispatch to the National Geographical Society at Washington, saying: "Have won at last. The pole is ours."

(Continued on Page Two.)

ENDED HIS LIFE.
Prominent Merchant of New Orleans Commits Suicide in New York.

(By the Associated Press.) New York, Sept. 7.—The body of T. J. Schmidt, 36 years old, a member of the wholesale grocery firm of Schmidt & Ziegler, of New Orleans, was found in a room in the Gilsey House today with his throat cut and the arteries in both arms severed. A small razor knife blade of the kind used in safety razors was found near the body.

DR. COOK WILL HOLD DETAILS FOR BOOK

Has Received An Immense Offer

RECEIVES GOLD MEDAL

Decorated by the Crown Prince With Coveted Honor—Lectures to Geographical Society, But Adds Nothing New—Will Not Enter Into Any Controversy With Commander Peary.

(By the Associated Press.) Copenhagen, Sept. 7.—One of the most remarkable results of Commander Peary's rivalry with Dr. Cook for the discovery of the pole is that Dr. Cook's profits from the enterprise are likely to be largely increased. He received today offers for his books and lectures at twice the figures previously tendered. One American of the highest standing offered terms almost startling, and it is believed, far beyond any sum hitherto paid for such work. Dr. Cook is likely to accept this offer.

The colloquy is beginning to grow warmer here, Commander Peary's statement is unanimously accepted as true, but there is a very large following faithful to Dr. Cook. His lecture before the Geographical Society tonight, however, added little to the information he had already given out with reference to his expedition and he repeated the declaration of his intention to withhold details until the publication of his book.

The king and queen, Prince and Princess George of Greece and many of the members of the royal family, together with a large gathering of the most prominent people in Copenhagen this afternoon, witnessed the presentation to Dr. Cook of a gold medal by the crown prince, an listened to his explorer's lecture afterwards. Standing in front of an immense map of the Arctic regions, which was surmounted by the stars and stripes, Dr. Cook outlined his progress to the north pole.

Introducing the explorer, the crown prince said that his reception in Greenland and at Copenhagen showed the way the Danes appreciated his wonderful exploit. The prince then begged the honor of presenting to him the medal of the Geographical Society.

"It is too early," said the explorer, "to give the general results of the expedition. Time is required to digest." (Continued on Page Three.)

ENJOINS STATE COURT

SUIT AGAINST ATLANTIC COAST LINE REMOVED TO FEDERAL COURT.

(Special to News and Observer.) Asheville, Sept. 7.—A novel suit, entitled J. E. Etheredge, administrator, for Joseph C. Etheredge, deceased, against the Atlantic Coast Line Railway, ready for trial in the Superior Court of North Carolina, has been enjoined today by Judge Pritchard and removed to the United States District Court.

This action was taken upon application of the Atlantic Coast Line. Etheredge alleges in the original complaint that the deceased was approaching a grade crossing on the Atlantic Coast Line and a watchman told him to "go ahead." The railroad was a short distance from the crossing, operating a stationary engine, and Etheredge's horse, becoming frightened by the noise of the engine, ran away, killing the man. The administrator brought suit against the railroad, alleging criminal negligence and made the operator of the stationary engine a party to the suit.

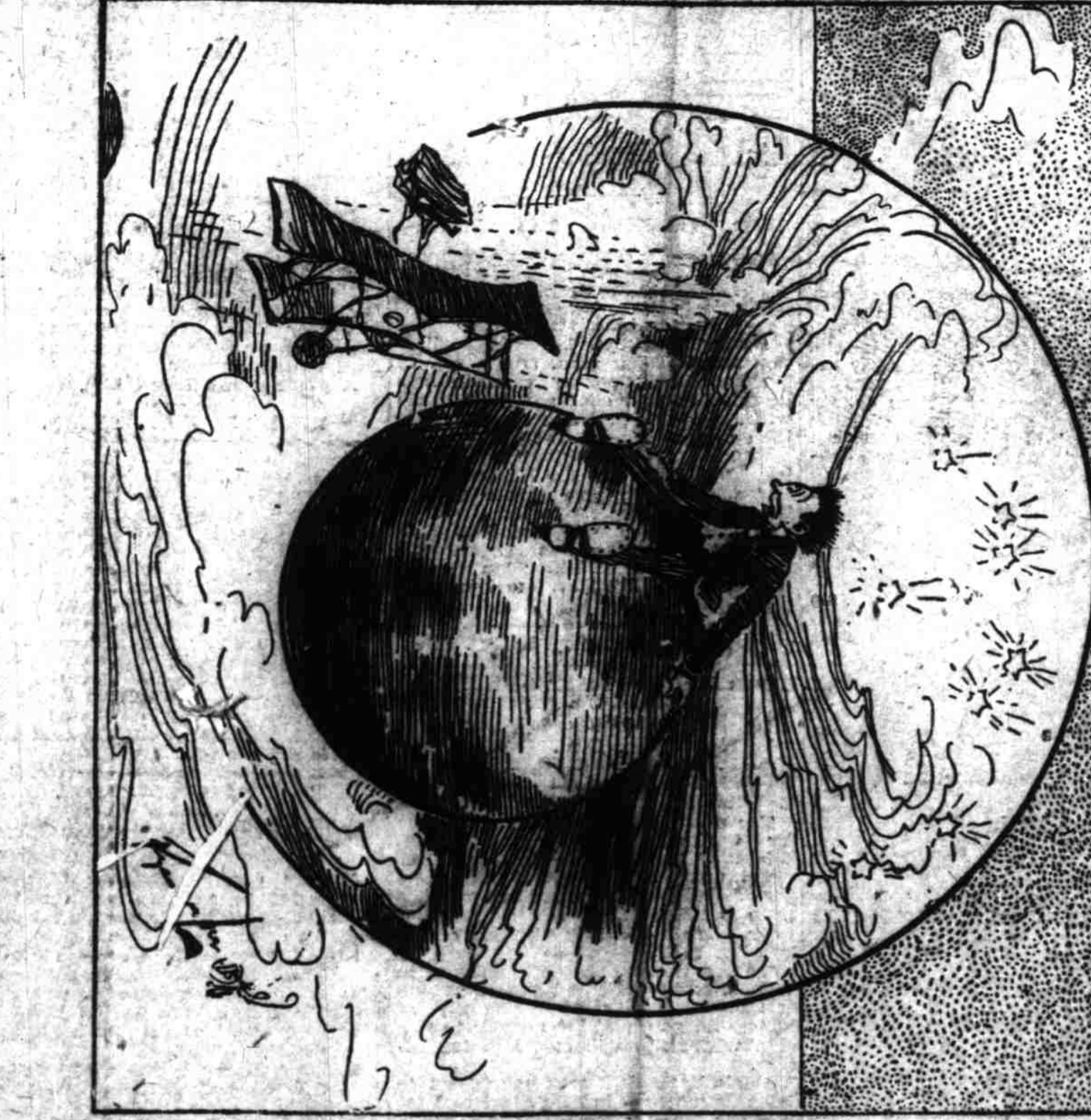
The case promises to be hard fought and will be a test case as to liability of accidents caused by railroads rather than by trains.

ORDER BOND ELECTION

BETHANY TOWN WILL VOTE ON ISSUE FOR STATESVILLE AIR LINE RAILWAY.

(Special to News and Observer.) Statesville, N. C., Sept. 7.—The county commissioners yesterday ordered an election to be held in Bethany township, October 8th, to vote on the question of the township's paying \$12,500 bonds for the Statesville Air Line Railroad. The Air Line Railroad will run through this township but for some reason at a former election in the township, at the time when other townships voted bonds for the road, the bonds were lost by a majority of two votes. Now that the railroad is a certainty, the people of Bethany are beginning to realize what it will mean to them and it is believed that the next election will result in a victory for the railroad. Everything now points toward the success of the road and as soon as the State convicts are available, probably within six or eight months, work will begin. Winston-Salem will be shown in a material way from whence the first railroad will enter Yadkin county.

(Continued on Page Two.)



ROBINSON CRUSOE UP-TO-DATE
The Aeroplanist—Wrecked, he gum, on a deserted planet!

ELAM TELLS OF SHOOTING RULES AGAINST THE DRYS

SAYS THAT HE WAS OBEYING THE ORDERS OF CAPTAIN LANT IN SHOOTING.

(By the Associated Press.) Atlanta, Ga., Sept. 7.—The trial of Lieut. W. L. Hazelhurst and Private Grayce E. Elam, of the Seventeenth Infantry, U. S. A., on charges of manslaughter growing out of the killing of private Edward W. Coulter of company D, Seventeenth Infantry, on the night of August 14th opened before the general court martial at Fort Meade today.

The star witness of the first day's proceedings was Private Elam, who fired the shot that killed Coulter. Lieutenant Hazelhurst had taken a squad to investigate a disturbance in a near-by saloon near the fort. On approaching the saloon, two soldiers ran out and made for the reservation. One was captured, but Coulter failed to obey the command to halt and was shot down by Private Elam, who claims to have acted under orders from the lieutenant.

"Sir, I Lieutenant Hazelhurst told me to fire into the air. I did not understand him simply to reply, 'yes, shoot.' On that command I fired and Coulter fell." Elam told the court that he did not shoot with the deliberate aim of killing Coulter. He said he would not swear that Hazelhurst did not say more than "yes, shoot," but he heard nothing more.

Private Elmer H. Smith, the third member of the squad under Lieutenant Hazelhurst, testified that Private Pinkton, who ran out of the saloon with Coulter, obeyed the command to halt and was left in his charge while Hazelhurst and Elam continued in pursuit of Coulter. He did not hear the order to fire. He testified that Pinkton was intoxicated.

Elam said that the shooting took place outside the reservation. After Coulter fell, Hazelhurst said to him to witness, "Why, I told you to fire into the air."

The members of the court this afternoon viewed the scene of the shooting.

GUARD KILLS A CONVICT

PRISONER WAS TRYING TO MAKE HIS ESCAPE FROM ROAD BUILDING CAMP.

(Special to News and Observer.) Greensboro, N. C., Sept. 7.—A negro convict, serving sentence on roads, while attempting to escape was shot and instantly killed by a guard at the Mount Pleasant road building camp yesterday. The negro was sentenced two weeks ago to a four weeks term by City Judge Bure for trespassing, giving his name as William Turner and his residence as Durham. The only official police of the killing was by a phone message asking the sheriff for permission to bury the body at the county home and it was interred there this afternoon.

JUDGE KELLY HANDS DOWN AN OPINION IN BRISTOL ELECTION.

(By the Associated Press.) Bristol, Va., Sept. 7.—A decision handed down today by Judge Kelley of the corporation court, in the local option case, is considered as tantamount to a declaration of the legality and regularity of the election held here on July 28th, in which the saloon element won by a majority of 53 votes.

The prohibitionists in contesting the election alleged that more than fifty men living on the Tennessee side of Bristol cast votes in the election. The court held that a person once acquiring citizenship in Bristol, Va., may go wherever he likes and return and participate in any election.

SURVIVORS FORT FISHER

EX-CONFEDERATES ARE GIVEN ROYAL TIME AT REUNION AT UTICA, NEW YORK.

(By the Associated Press.) Utica, N. Y., Sept. 7.—About fifty ex-Confederate soldiers from the vicinity of Wilmington, N. C., arrived here today for a reunion of survivors of the fight at Fort Fisher, January 15, 1865, which resulted in the capture of that stronghold by regiments from this section of the country.

The men from the South are being given a pleasant reception here. Not only are the Grand Army men present from all of central and northern New York, but the city has been decorated for the occasion. Today was spent in sightseeing and this evening a formal welcome was extended, Wednesday evening Governor Hughes and Vice-President Sherman will speak at a meeting to be held in the armory. In the forenoon there will be a parade in which 10,000 school children will be in line. Thursday will be given up to an excursion to Cooperstown and Otsego Lake.

Several receptions and regimental reunions have been planned.

MOORS ATTACK SPANIARDS

BUT THEY WERE REPULSED WITH HEAVY LOSS—SPANISH LOSS LIGHT.

(By the Associated Press.) Mellilla, Morocco, Sept. 7.—Two columns of Spanish troops leaving El Arba today at Haddara, were attacked by the Moors yesterday but repulsed the enemy with heavy loss. The Spaniards had two men killed and 15 wounded.

SIN OF OMISSION.
The Cause Which Led to Dismissal of Cadet Booker.

(By the Associated Press.) West Point, Ga., Sept. 7.—Cadet John H. Booker, of this city, had nothing whatever to do with the hanging of Cadet Rolando Weston, but was dismissed from the West Point Military Academy for permitting without interference, cadets of the third class to require cadets of the fourth class to get down on all fours and run a race as horses and then auction them off.

This is the information just received here in a letter from Secretary of War Dickinson to Congressman W. C. Adamson. Booker was a senior. Secretary Dickinson stated that it was likely Congress, at its session would call for and publish the report of the board of inquiry.

VERDICT ASTOUNDS JUDGE

JURY ACQUITS W. M. AND ROBERT PRITCHARD IN CALDWELL COUNTY.

(Special to News and Observer.) Lenoir, N. C., Sept. 7.—In the Superior Court here this morning the jury returned a verdict of not guilty in the case of the State vs. W. M. and Robert Pritchards, charged with homicide. The court room was well filled with men and women eager to hear the verdict. Everybody was astonished beyond measure when the foreman announced they had agreed and their verdict was "Not Guilty."

The judge turned to the jury and asked: "Not guilty of any crime?" And the reply came, "No, sir." His honor seemed dumfounded for a moment for the want of something to say, and discharged the jury and prisoners.

The facts in the case are these: Last spring deputies Garland and Sam Smith went to the Harper Creek section in the northern part of the county to arrest a man named Honeycutt who was wanted for blockading. He wanted the Pritchards to go on his band. When the Pritchards came on the scene they refused the release of Honeycutt and threatened to kill the officers if he was not released. One of the Pritchards shot at the officers and killed the prisoner and came near killing Deputy Garland.

After the Pritchards were released they were arraigned for assault with deadly weapons on the officers, and pleaded guilty. The judge gave them the limit of the law, which is two years, and is quoted as having said that was the best he could do for them, and wished he could give them a longer term.

POOR DAY FOR PRACTICE

Eight New Stationary Targets Being Constructed.

(By the Associated Press.) Norfolk, Va., Sept. 7.—The Atlantic battleship and cruiser fleet had "poor day" today for their target work. O'Brien was still with the fleet, but she was the only battle practice target on the drill grounds.

From the navy yard today it was announced that eight new stationary target barges were being constructed.

STATE COMMERCE COMMISSION

ISSUE IN LUMBER CASES.

(By the Associated Press.) Washington, Sept. 7.—An order involving approximately a million dollars in reparation was issued today by the Interstate Commerce Commission. It included claims in which it is known as the Central Lumber Association territory—Louisiana, Mississippi and Western Alabama—and involved a refunding or amounts paid by a large number of shippers of yellow pine lumber from the territory to other States, of which an overcharge of two cents a hundred pounds was collected by various railroads.

The settlement of the cases was made on the same basis as that effected in the yellow pine lumber cases in other territories of the South, sixty-seven per cent of the provable claims being allowed.

Bishop Ward Critically Ill.
Nashville, Tenn., Sept. 7.—Bishop Seth Ward, of the Methodist Episcopal church, South, is critically ill at Yokohama, Japan. This information was received here today in a cable to Dr. W. B. Lambeth, missionary secretary of the church.

JUDGE CONNOR DECIDES AGAINST RED C OIL CO.

In A Learned Opinion Every Issue Was Decided In Favor of the State Board of Agriculture

THE BILL WAS DISMISSED

Complainant Oil Company Taxed With the Costs—Appeal Taken to the United States Supreme Court—Effect of the Opinion is to Allow the Board of Agriculture to Proceed With the Enforcement of the Inspection Act Just as if no Suit Had Been Brought—Controversy Was Over Act of the Legislature of 1909 For the Inspection of Illuminating Oils and Fluids.

The opinion of Judge H. G. Connor in the case of the Red C Oil Company vs. the State Board of Agriculture, handed down yesterday in the United States District and Circuit Court, is of vital interest to the people of North Carolina. Every issue was decided in favor of the Board of Agriculture, and the bill in equity, filed by the complainant, was dismissed, the plaintiff being taxed with the costs.

It will be remembered that the General Assembly of 1909 enacted a law providing for the inspection of illuminating oils, to determine their value for illuminating purposes and their safety. A tax of one-half cent per gallon upon all the oil sold in the State was levied to defray the expense of inspection. An inspector, one from each congressional district, was appointed by the Board of Agriculture to go over the State, collect samples of oil sold, see that all vessels containing oil were properly stamped, and to forward the samples collected to the State Oil Chemist at Raleigh for analysis.

On the first of July the Red C Oil Company, through its attorneys, Messrs. Ashcraft, Winston, filed a bill in equity in the Circuit Court of the United States for the Eastern District of North Carolina, and upon petition a restraining order was issued. Judge Pritchard and made return on the writ of habeas corpus on Monday in August. On the return day the Board of Agriculture through its attorneys, Hon. T. W. Bickett, attorney general of the State of North Carolina, made return on the writ of habeas corpus, filed an answer to the bill and the case was argued for two days before the court. The bill was based upon two propositions: First, that there was an unconstitutional delegation of power to the Board of Agriculture; and, second, that the act of the legislature, while purporting to be an inspection act, was really a revenue act.

Judge Connor in a most learned and exhaustive opinion published below, refused to sustain either of the propositions. The charge that the legislature under the guise of doing another thing attempted to do another thing, challenged the constitutionality of the Assembly of 1909, and it will be gratifying to the people to know that the court holds that this challenge cannot be sustained. The opinion is also interesting in that it shows the tendency of the court to refrain from interfering with legislative enactments, save where these enactments are clearly repugnant to the constitution of the United States. While there are many things about the case which none but lawyers can understand, the opinion as a whole will give wide satisfaction to the people.

The effect of the opinion is to allow the State Board of Agriculture to proceed with the enforcement of the inspection act just as if no suit had been brought. The Red C Oil Company through its attorneys gave notice in open court that it will appeal to the Supreme Court of the United States. This means that it will be a long time before any final decree is made unless the case should be advanced by the Supreme Court. The cost of the suit, the plaintiff were allowed full Monday to make a motion to give a bond and have the injunction continued. The counsel for the State contended that it was not a case in which a bond should be allowed for the continuance of an injunction, but without argument this matter was continued till Monday when counsel for plaintiff can make the motion if they desire to do so.

The Opinion.
The complete text of Judge Connor's opinion is as follows:
Opinion of Hon. Henry G. Connor, Judge, filed September 7, 1909, in the United States of America, Eastern District of North Carolina, in the Circuit Court, in Equity.
The Red C Oil Manufacturing Co. vs. The Board of Agriculture, William A. Graham, Coms. & others.
In this cause upon filing the bill, a temporary restraining order, enjoining the enforcement of the provisions of the statute in regard to inspection, but not as to the payment of the tax, was granted, with an order returnable on August 2, 1909, to defendants to show cause why an injunction should not be granted to the hearing.
Aycock & Winston, for Complainant, R. H. Battle & Son and T. W. Bickett, Attorneys General, for Defendants.
CONNOR, (District Judge).
Complainant seeks to enjoin the enforcement of the provisions of an Act of the General Assembly of North Carolina, entitled "An Act to provide for the inspection of illuminating oils and fluids," passed on July 1, 1909.

(Continued from Page Seven.)

\$1,000,000 REPARATION

ORDER ISSUED BY THE INTERSTATE COMMERCE COMMISSION IN LUMBER CASES.

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