

**"GOV. W. W. KITCHIN**  
ON BEHALF OF  
**Progressive Democracy**  
VS.  
**SENATOR F. M. SIMMONS"**

**"BEFORE THE COURT OF LAST RESORT--THE PEOPLE**  
Indictment."  
**MOTION TO QUASH**

And now comes Sam L. Rogers, Campaign Manager for Senator F. M. Simmons, before this Court of the People, and in apt time moves to **QUASH THE BILL OF INDICTMENT** in this cause, for that--

A. That said Gov. W. W. Kitchin, the complainant in this cause, is not in fact the representative of "Progressive Democracy"; that the said Gov. W. W. Kitchin is not a "Progressive Democrat"; that he is "progressive" only in his political ambitions; that he has no rights in law, equity or good conscience to plead or be impleaded "on behalf of Progressive Democracy," and that insofar as the complainant pretends to represent the Progressive Democracy in this cause that the same is a sham and a fraud, and that it is invalid and without force in law or equity.

B. For that the indictment is not in fact brought "on behalf of Progressive Democracy," but that the same is in fact brought solely for and in behalf of the said Gov. W. W. Kitchin, and for his own use and behoof.

C. For that the indictment is not brought in good faith, and that on the contrary, it is the habit of the said Gov. W. W. Kitchin to bring false and fraudulent indictments against good Democrats, in the name of Progressive Democracy, when there is in fact no substantial cause for such indictments, and when in good fact the only reason for bringing such false and fraudulent indictments against good Democrats is that the said Gov. W. W. Kitchin wants an office for the said Gov. W. W. Kitchin, as witness Exhibit "A" herewith attached, showing a like charge against the knightly Locke Craig, whom the said Gov. W. W. Kitchin is now supporting and commending in high terms as worthy of the confidence and highest honors of the party, and which exhibit your respondent prays to have considered as a part of this record.

D. For that the said Gov. W. W. Kitchin is so distinctly a non-progressive and reactionary that it has been truthfully said that in sixteen years of public service, twelve years in Congress and four years as Governor of the State, he has made no record--no achievement either in the line of material development, in the development of any distinctively ennobling sentiment, or in the line of lifting any burden from the backs of the people who have honored him, that he can now point to as a commendation of his appeal to be entrusted with six years more of public office, and that his only means of political preferment appears to be by indictment of other, and more faithful, Democratic public servants.

E. For that he not only has not made any record of progressive achievement, but that he does not now offer any promise of progressive achievement in the future; that he does not now profess allegiance to any principle of progress that Senator Simmons does not now stand for, and that he has not heretofore consistently supported, except his erratic platform of free trade in North Carolina products, as against revenue duties on such products, which would not make for progress, and which is not in accord with the National Democratic Platform adopted at Baltimore.

F. For that the professions of the said Gov. W. W. Kitchin, when seeking public office, are not worthy to be taken seriously, as evidenced by his zealous professions of hostility to the American Tobacco Company, when a candidate for Governor four years ago, and that after he secured the aforesaid office he was found "asleep at the switch," as shown by Exhibit "B," herewith attached; that he advised legislators to go "slow" in anti-trust legislation, as shown by Exhibit "E," herewith attached, and that he "recommended" approved and endorsed amendments to the anti-trust law that weakened, instead of strengthened, that law, as evidenced by quotation from decision of the North Carolina Supreme Court, herewith attached, and marked Exhibit "D," and as further evidence his appointment of friends of the American Tobacco Company to office.

G. FOR THAT THE SAME INDICTMENT WAS BROUGHT BEFORE THE PROGRESSIVE DEMOCRATIC STATE CONVENTION, AND WAS FOUND NOT A TRUE BILL.

H. For that since Senator Simmons cast the votes for which he has been criticised on amendments to the Payne-Aldrich bill the Democrats of the Senate have twice made him leader of tariff legislation in that body, and that both times his leadership was highly acceptable to his colleagues, and in thousands of papers he was praised by the Associated Press.

I. For that the indictment is not brought in good faith in that other Congressmen from North Carolina voted as Senator Simmons did on tariff measures, and Gov. W. W. Kitchin is not only not making any fight against them, in the name of progressive or any other kind of Democracy, but he has insisted that such rules be adopted for the Senatorial primary as will not permit any voter to be considered a Democrat and entitled to vote in said primary unless he shall first have voted for such Congressmen.

J. For that the methods by which these unfavorable newspaper expressions have been obtained have already been made plain. Your respondent avers that if he should employ experts to search the files of the Congressional Library at Washington that he could produce without number opinions from outside papers commending Senator Simmons for his service to the party and to the cause of tariff reform in the Senate, but that in so far as this matter is to be settled by newspaper opinion the opinions of loyal and true North Carolina Democratic editors is entitled to far greater weight; that they are familiar with all the facts and conditions and with the relative services and achievements of the several candidates; that it is well known that a great preponderance of these North Carolina papers are vigorously supporting Senator Simmons, and repudiating the slanderous charges brought against him, as witness Exhibit "E" attached, written by Archibald Johnson, Editor of Charity and Children, one of the best loved and highly honored editors and citizens of the State; and that the columns of this paper could be filled for weeks with other like expressions of confidence in Senator Simmons and repudiations of the said Governor W. W. Kitchin's misrepresentations of the Senator and his record.

K. For that the evidence presented to sustain the indictment is either irrelevant and incompetent, or unworthy to be believed, or such as has already been

completely answered and disposed of in this court. Taking it up by divisions for a further answer, it is apparent:

1st. That much of it is entirely irrelevant to this controversy, as the quotations from Woodrow Wilson, Progressive Farmer, Carolina Union Farmer, and others, which was not intended to relate, and which does not in fact relate to Senator Simmons. On the contrary this respondent avers that these quotations present no issue whatever against Senator Simmons; that the tariff views of Woodrow Wilson, as they have been expressed in his public addresses, are practically identical with those of Senator Simmons, and of the Baltimore platform.

2nd. That some of the witnesses are in effect subsidized witnesses, and that their testimony is unworthy of belief, as witness the "Scarlet Woman of Texas Journalism," and the Helena, Montana, Independent, written especially for Kitchin Headquarters.

3rd. That others of them are incompetent to testify in a Court of Democracy, as witness Mark Sullivan, of Collier's Weekly, a Pennsylvania Republican, half owner of a straight Republican paper in Pennsylvania, and himself a straight Republican and member of a Republican Club in New York, as shown in "Who's Who in America," and by data which was evidently furnished by him to that publication.

4th. That all of them are alien to our State and not entitled to be heard in a North Carolina Democratic primary, in which North Carolina Democrats select a Democrat to represent the welfare and the interests of this State. Every other State in the Union has the same number of Senators to represent them as we have to represent North Carolina, and North Carolina Democrats are going to attend to this job in their own way, and they don't need to be told by Montana or any other State what Democracy means. North Carolina has been handling these sort of problems about as long and about as well as any of them.  
AND FOR A FURTHER ANSWER--

Your respondent avers that insofar as there is any truth in the testimony of these foreign witnesses that it only goes to establish the loyalty of F. M. Simmons to the State that he has served so well and that has honored him so highly. Senator Simmons has made some enemies away from North Carolina, and he has made them because he has been loyal to North Carolina, and to the most approved principles of Democracy.

Senator Simmons knows that the people of North Carolina are not a selfish people. He knows that they are patriotic, and that they are willing to take a broad view of public questions, and so he voted for material reduction of duties on all products in which the South is interested, even in connection with the highly protective Payne-Aldrich bill, and on three separate occasions he voted for free lumber in connection with the Reciprocity bill. The average rate of duty that he voted for on articles that he has been criticised for was less than 15 per cent, while the tariff bills passed by the recent Democratic Congress averaged over 30 per cent. All this array of selfish criticism of Senator Simmons from outside sources comes from the fact that he bared his breast to the enemy--(the Republican enemy, that wanted to satisfy the righteous demand for genuine tariff reform by putting farm products and Southern products on the free list, without interfering with the protection given the trust manufacturers)--and because he stood between the people, whose interests he was charged with representing, and absolute free trade for North Carolina and for the South, while protective duties piled high were maintained on all other products. It is because he has refused to subject the products of the North Carolina farmer, the North Carolina mill man and the North Carolina woodsmen, to unrestrained free trade, that he is called in question here this day.

Free Trade is not, and never has been, a tenet of Democracy, and no party or statesman in this country (except Gov. W. W. Kitchin) advocated it now as a present or a prospective policy.

Every progressive leader of the Progressive Democracy repudiates free trade and North Carolina does not need a representative in the Senate to fight for free trade in farm products--tobacco, peanuts, live stock, potatoes, rice, etc. What she does need, and what the country needs, is a man with the training and position of influence which Senator Simmons has acquired to attack the citadel of protection--the high schedules on the products of the Steel trust and other trust manufacturers that now place such great and unjust burdens on the people to earn unjust dividends on trust watered stock, and to reconstruct tariff duties on manufactures and other articles on a revenue basis, for which he was making the fight in the recent session in entire accord with the Democrats of the House and Senate. Read the Baltimore platform and the speeches of Woodrow Wilson and you will see that these are the great abuses that they are agitating for correction, and in F. M. Simmons we have the best prepared man in America for the job--the man who has been placed at the head of the fight in the Senate by his Democratic colleagues; who has been neither disloyal nor idle in the service of the people, who has done something for his State, and for his party, and who is now and has been for years, fighting for every tenet of Progressive Democracy that the progressive convention at Baltimore deemed worthy of a place in its chart of progressive principles.

**Wherefore your respondent prays that judgment be entered--**

1st. That the indictment in this case be quashed.

2nd. That Senator Simmons be returned to the Senate, where he has acquired the greatest honor that has come to a North Carolinian in half a century and a position of greatest opportunity for service to his State and to his country in the future.

3rd. That he be given such a majority on November 5th as will be an effective answer to the false and slanderous indictments brought against the leader of the White Supremacy campaign--now the leader in tariff reform in the United States Senate; and such majority as will be effectual notice that political preferment and honor is not hereafter to be gained in North Carolina by false indictments against the personal and political character of loyal Democrats.

**SAM L. ROGERS, Manager for Senator Simmons.**

**Exhibit "E"--WHAT ARCHIBALD JOHNSON THOUGHT OF THE GOVERNOR'S SPEECH.**

Governor Kitchin made a speech in Thomasville a week ago yesterday on his way through the County, and Mr. Archibald Johnson, editor of Charity and Children, published at the Baptist Orphanage at Thomasville, commented on it through the columns of The Thomasville Davidsonian last week. Mr. Johnson was not pleased. He says:

"An audience of men that filled the hall, with perhaps a dozen ladies, gathered on Tuesday evening last to hear Governor Kitchin speak. It was a cold crowd for a campaign orator. The usual enthusiasm and spirit of such an occasion were painfully absent. It was a melancholy meeting. The most pronounced applause was given when the Governor held up the lumber journal and showed the picture of Senator Simmons on the cover; and a Simmons man started the cheering and the others joined in."

"The Governor realized at the outset that he was facing an audience the majority of whom were favorable to Senator Simmons; if they were Kitchin men they were suffering with cold feet. The speech was a strong deliverance, and the boldness and courage of the speaker as he hurled his anathemas at Simmons in the face of the friends of the Senator, was altogether admirable. With the exception of the first ten minutes, in which the speaker eulogized Woodrow Wilson and Locke Craig, the whole speech was a bitter and relentless tirade against the man who for 27 years has been a recognized leader in the public life of North Carolina, and a fulsome and disgusting tribute to the fidelity, ability and honesty of William W. Kitchin."

"The warm eulogy of the Governor as to the purity of motive of his blameless life, if it had come from another, would have been beautiful; but coming from the lips of the man himself, it was slightly out of taste. One could be reminded of the Pharisee who went up into the temple to pray and who thanked the Lord that he was virtuous, honorable, truthful, saintly and pure, and not like the poor publican by his side who would not so much as lift his eyes to heaven."

"The whole trend of the speech was destructive. It was an attempt to rise upon the ruin he had wrought. While there was nothing in what he said that could be fairly construed as personal abuse, the culmination and conclusion of it all in the mind of the hearer who did not stop to think it over, was that no traitor more designing ever lived in the United States than F. M. Simmons."

"The speech was not a vote-getter--it was exactly the opposite. Mr. Kitchin, we dare say, is not so strong in Thomasville as he was before he delivered his speech. The policy he is pursuing cannot win out. If Governor Kitchin is nominated to the Senate it will be in spite of the speeches he is making in this campaign."

"The Governor boasted that his white banner had never trailed in the dust, and all through the speech such boasts as this weakened all he said. It was a strange mixture of bitter, unrelenting hatred toward his opponent and of adulation of himself. To hear him tell us, for the past quarter of a century William W. Kitchin has been the axletree of the country bearing on his broad shoulders the burden of the Government. We are not in this article making any prediction as to the outcome of the Senatorial struggle; we are simply giving our readers our opinion of Governor Kitchin's speech and the spirit that promoted it, and we do not hesitate to say that we were surprised and disappointed at its matter as well as its tone. It was not the appeal of a statesman, but the special pleading of a selfish and ambitious politician."

**EXHIBIT "A"--WHEN THE KITCHINS SLANDERED CRAIG.**

Asheville, June 19, 1908.--The Hon. Locke Craig issued the following statement tonight: "Have just been informed that before the primaries held in Nash and Franklin Counties, and others, on the day of the primaries, a report was circulated in these Counties by the friends of Kitchin, that I not only voted for Blaine, but while in Bertie County voted the entire Republican ticket and for the negroes on the ticket. This statement is utterly false, and was originated by some slanderer for the purpose of helping Mr. Kitchin, and injuring me. I never in my life voted for any Republican except Blaine, and I never in my life cast a ballot in the County of Bertie, and never under any circumstances voted for a negro."

"I also have information from a gentleman of absolute reliability that Congressman Claude Kitchin stated in the presence of a number of gentlemen last week in Louisburg, Franklin County, a few days prior to the primaries in that County, that he could get an affidavit from a reliable man in Bertie to the effect that I not only voted for Blaine, but for the entire Republican ticket, including Congressman O'Hara. I have been further informed that Mr. W. W. Kitchin has intimated in some of his speeches that I voted the Republican ticket in Bertie County."

"If these statements be denied I can prove my authority. I denounce each and all of such allegations as vile falsehoods, originated by some designing person for the advantage of Mr. Kitchin. Such methods have been freely adopted without hesitation in the desperate attempt to injure me, with the Democrats of North Carolina. It is astonishing that Democrats would resort to such tactics. I defy either of the Kitchins or any of their supporters to produce any proof of these slanders."

**EXHIBIT "B"--WHY KITCHIN WANTED TO BE GOVERNOR.**

And Governor Kitchin plead for the office of Governor because, as he said, the Tobacco Trust was fighting him because it knew he "would not acquiesce in their iniquities." Well, IF BUCK DUKE HAD BEEN GOVERNOR, the Tobacco Trust would not have been troubled less than it has been by our "Trust-busting" Governor.--News and Observer, July 25, 1911.

**EXHIBIT "C"--A CONFESSION.**

Mr. Lockhart then said that he had a confession to make. "Four years ago Mr. Kitchin came to Wadesboro and opened the campaign, and in that speech Mr. Kitchin said, 'elect me Governor, and I will put the trust officials behind prison bars and in stripes.' Mr. Lockhart said:

"I believed him. I knew that he had failed to do anything while he was in Congress; but he had told me that he did not know how and that if he could be made Governor he would be an independent and active Governor. I trusted him and supported him. I spent money for carriages, hired a brass band, paid for the printing of the tickets, and I worked for him. It is true he offered to repay me; but I wouldn't let him and told him that I did not want the money; but that I did want him to be a man for the people of North Carolina, and fulfill his promises to the people."

"The first suspicion of Mr. Kitchin came to me when the convention was in Charlotte four years ago, and then it was that Mr. Reuben D. Reid of Rockingham County came to me in the Selwyn Hotel and said that he was afraid that we were making a mistake and that Kitchin was in the hands of the American Tobacco Company. His closest friends were the close friends of that big corporation. They were apparently backing him."

**STILL BELIEVED.**

Still, I believed in Kitchin. Then as the deadlock continued, Mr. Reid came to me again and begged me to withdraw my influence from Mr. Kitchin, but still I believed in him, and I still thought he was all right until I, as the Senator from Anson County introduced the bill known as the Lockhart anti-trust bill--I was not its author. It was drawn by Reuben D. Reid of Rockingham County. I was told by William Walton Kitchin that the people of North Carolina did not want any anti-trust legislation, and that the people of Rockingham County had defeated Reuben D. Reid because of his interest in that legislation."

"Mr. Kitchin said to me 'go slow, the people don't want anything done.' I went out from his office disgusted and undone, and my confidence in W. W. Kitchin was gone, and gone forever, and I am opposed to nominating that kind of a man for the exalted office of United States Senator."--Speech Hon. James A. Lockhart, at Madison, N. C., Oct. 11, 1912.

**EXHIBIT "D"--ANTI-TRUST LAW NARROWED AND RESTRICTED.**

Quotation from opinion delivered by Supreme Court of North Carolina, Spring Term 1912, No. 515, Burke, J. M. Smith vs. Morganton Ice Co. et als.: "Laws 1907, Chap. 218, now Rev. 3028a, sub-section (b) made it unlawful for 'Any person, firm, corporation, or association to directly or indirectly destroy wilfully or injure, or undertake to destroy or injure the business of any opponent or business rival in the State of North Carolina with the purpose or intention of attempting to fix the price of anything of value when the competition is removed.'"

This action was begun when the above section was in force, but Chap. 167, Laws 1911 sub-section (b) amended the above section by interpolating the words "BY CIRCULATING FALSE REPORTS" tending to damage the credit of said opponent or rival. The effect of the amendment made in sub-section (b) by the act of 1911 is to narrow and restrict the forbidden conduct "tending to interfere with the trade of an opponent or business rival with the purpose of attempting to fix the price of anything of value when the competition is removed" to the single instance when it is done "by circulating false reports." Under the act of 1907 all conduct of any nature done with such purpose or intention was made unlawful. Under the act of 1911 no conduct with that purpose or intention is unlawful save only that of "circulating false reports."