The Wilmington Messenger.

VOL. XVII., NO. 134. WILMINGTON, N. C., SATURDAY, JUNE 4, 1904. FIVE CENTS.

IS RELEASED

The Contempt Proceedings Against Editor Daniels End

CASE DISMISSED

Judge Pritchard Said He Failed to Find Anything in Section 725 of the Revised Statutes to Warrant the Action of Judge Purnell and Hence He Ordered Daniels Released—Ex-Judge Winston Made the Argument for Daniels and District Attorney Harry Skinner Represented Judge Purnell—Mr. Daniels Not Only Gets His Freedom, But He is Relieved of the Payment of the $2,000 Fine.

Raleigh, N. C., June 3.—The contempt proceedings of Federal Judge Purnell against Editor Josephus Daniels, of The News and Observer, who has been in custody since Monday for refusal to pay a $2,000 fine, was ended short off this afternoon, Mr. Daniels being released.

The habeas corpus writ was heard by Judge Jeter C. Pritchard, the new justice of the fourth district, who came from Washington, D. C., for the purpose. United States Marshal H. C. Dockery brought Mr. Daniels into court at 3 o'clock. A great crowd was present to hear the case.

Justice Pritchard sat alone, though this week the Federal court is in session and Judge Purnell is on hand. Argument was made for Mr. Daniels by ex-Judge R. W. Winston, and by instructions of Judge Pritchard, District Attorney Skinner represented Judge Purnell.

After argument Judge Pritchard dismissed the case and released Mr. Daniels, saying he failed to find anything in Section 725, Revised United States Statutes, to warrant the action, and hence he ordered the respondent dismissed.

Mr. Daniels was fined by Judge Purnell for editorially criticising the judge for his actions in appointing receivers for the Atlantic and North Carolina railroad.

The appointment of receivers was overruled by Chief Justice Fuller, and now Judge Pritchard releases Mr. Daniels.

The whole state is rejoicing, and telegrams of congratulation are pouring in on Mr. Daniels.

(Special to The Messenger.)

Raleigh, N. C., June 3.—A few minutes before 3 o'clock this afternoon, U. S. Marshal Dockery took to the Federal court room his prisoner, Editor Josephus Daniels, and when 3 o'clock struck, there was a notable assemblage in the room. Judge Pritchard entered, a striking figure, fine in form and feature, stately in his black robes, the audience standing until he was seated. Daniels, in a brown linen suit, looked very cool and collected. Beside him sat his brothers, Frank and Charles, and in front were his counsel, Jarvis, Gray, Busbee, Pou, Womack, Holding, Winston, Fred. Woodard and Watson.

Marshal Dockery read the writ of habeas corpus which Judge Pritchard issued yesterday at Alexandria, Va., and said he produced the body of Daniels and stated the reason for Daniels detention.

Judge Pritchard asked District Attorney Harry Skinner whether the practice of the court was that return should be in writing, and being informed that it was, instructed the marshal to make his return in writing. Attorney Gray read Daniels' petition for habeas corpus, which was submitted to the judge at Alexandria.

Judge Pritchard asked if the attorneys were ready and also asked the district attorney if he represented Judge Purnell. Skinner said he did not regard it as his official duty to represent Judge Purnell, as he had not been notified so to do, and so he has not prepared himself for the case.

Judge Pritchard said Judge Purnell ought to be represented, and he thought it Skinner's duty to represent him. Judge Pritchard informed Daniels' attorneys that it was not necessary to read the record in the case.

Ex-Judge Winston, of counsel, said he would seek in a general way to establish the proposition that the facts in the petition were true, adding that no evidence was taken below and none would be offered in this court, but that the endeavor would be to show the judge from the highest authorities that he had jurisdiction, as in hearing habeas corpus proceedings, only jurisdictional matters would be heard by Judge Pritchard.

The latter said it was not necessary to discuss the question of jurisdiction.

Winston forcibly reviewed the case from last Saturday, after the receivership order for the Atlantic and North Carolina railway had been made by Judge Purnell, then as to last Sunday, when the newspaper article appeared, and so on up to date. Winston cited a powerful array of authorities, all showing that the act of Congress of 1831 was drawn by President James Buchanan and was for the special purpose of limiting the power of the Federal court to punish editors for contempt; that the law was passed for this express purpose and was sweeping and complete and conclusive. He declared that since 1831, courts have no power to punish editors for contempt in such a case and that the power of the district and circuit courts is expressly limited by the statute. He cited cases which were on an exact footing with this one and declared that the act of 1831 was the great safety of our people, making courts free, press free, people free.

"Let us have peace," he declared loudly. "Let editors speak their mind, criticize fearlessly. This freedom is the glory of our country. If a man is too thin skinned to stand the comments of the press, he ought to leave. The world is his." He said that North Carolinians were a brave, fearless and fair people, who wanted fair play and would have it. He referred to the attempt to impeach the North Carolina Supreme court a few years ago, and said the liberty-loving lawyers of the state moved upon the Legislature and told the latter that judges should not be impeached. Winston added that he was proud to have been one of the lawyers who thus came here to prevent impeachment.

"We don't want any Spaniards, with daggers and dirks, but want North Carolinians, who can give blow and can take one. This is the first time since the passage of the act of 1831 that an editor has been called to answer for a publication about a court. Would it not be a fine spectacle of North Carolina, which boasts of her early love of liberty, her Mecklenburg declaration, the 20th of May, the hornets' nest at Charlotte—that she should be the first of the thirteen original states to take away the liberty of the press and the citizens. In other states, people talk about their ancestors, but here in North Carolina, they talk about freedom everywhere. Some 40 years ago, when the judiciary was about to be exhausted, God Almighty raised up Judge George W. Brooks to restore liberty to North Carolina."

Winston quoted Governor Fowlel's tribute to Brooks, who restored peace to his state. Winston asked that the writ of habeas corpus be allowed and denials be discharged, and that we may all go about our business in pleasant paths of peace.

District Attorney Skinner said he apeared in the matter only at Judge Pritchard's suggestion that it was his official duty so to do; that he would not attempt to reply to Winston's variable argument, nor attempt to discuss the jurisdictional matters involved or whether the newspaper article complained of was contempt or not, or whether the same was indictable under the revised statutes as an obstruction to the administration of justice as contemplated by the Federal statute, but all he desired to say was

(Continued on Fifth Page.)

THE PEEBLES CONTEMPT CASE HAS BEEN SETTLED

Habeas Corpus Hearing of Kerr, Southerland and Carroll

ALL DISCHARGED

The Habeas Corpus Case Was Heard Before Justices Connor, Douglas and Walker—Attorney Argo Spoke for Judge Peebles and Attorney Shaw Argued for the Respondents. The Justices Decided That Judge Peebles' Order, Without Notice to the Petitioners, Was Invalid and That the Prisoners Were Entitled to Discharge, and it Was So Ordered—Matter of Costs Deferred.

(Special to The Messenger.)

Raleigh, N. C., June 3.—The habeas corpus case of Kerr, Southerland and Carroll drew a large and distinguished audience this morning to the Supreme court room, Justices Connor, Douglas and Walker being on the bench.

Attorney Argo opened the state's case or rather that of Judge Peebles, his opening remarks being great praise of the North Carolina judiciary, and very eloquent, these being made in view of Tillett's strong speech for the respondents yesterday afternoon. Argo said he appeared formally for the sheriff of Robeson county, but really for Judge Peebles, and indirectly for the entire judiciary of the state. He argued that the question was not one of territorial jurisdiction, but of venue, and that venue is presumed to be correct and the court to have jurisdiction unless the defendants file a plea in abatement. He contended that Judge Peebles had no authority to dismiss and therefore treated the motion made by the respondents at Fayetteville as an objection to venue and ordered removal to Robeson. Argo contended that it was an absurdity to say that the court could not protect itself except in cases where it had jurisdiction, and cited cases supporting that position. He then addressed himself to the present petition and made the point that this court was bound by Judge Peebles' finding of the facts.

Justice Connor interrupted and asked the question: "Is there any finding that prisoners were in the presence of the court?"

Argo appeared somewhat confused and Judge Connor asked further: "Or is there any question as to that."

Attorney John D. Shaw, Jr., said: "Yes, sir. The record shows they were not present, since the process was issued to other counties for them and since the affidavits were filed in vacation."

Judge Connor asked: "Is it the conclusion to be drawn by this court from the facts or does it appear in the record? What we want to know is the actual fact."

Shaw said that the record showed by its entries, but there was no direct finding on that point.

Judge Connor said there must be a direct finding of fact before the conclusion of the hearing.

Argo then resumed his argument, saying that the contempt in this case was worse than one committed in the actual presence of the court, because it was deliberate and was put down in a permanent form.

Judge Connor said he would like to hear Argo on this point, as the petitioners said these affidavits were in response to an issue.

Argo said yes, but that they were false.

Judge Connor asked whether Argo's point was that the language was false or that it was contemptuous.

Argo said it was false and that the affiants were guilty of perjury, as well as contempt.

Judge Connor then said he would like to hear Argo on the necessity for notice to petitioners.

Argo replied that cases of direct contempt required no notice and he had quite a colloquy with Judge Connor, who insisted on having the facts found as to the presence of the petitioners in the court at the time of the alleged contempt.

Argo retired to ask Judge Peebles, who was in the library adjoining, about this matter, and on returning announced that the prisoners were not in court and had no noitce.

As Argo entered, Judge Douglas had asked the question whether the petitioners had any actual notice of the proceedings against them.

Shaw in opening his argument said that Judge Peebles had misconceived his position in the case, that he was not to be prosecuted or defended. Shaw argued the technical insufficiency of the affidavit and order, the former being dated in Northampton county, the order having been issued from Cumberland and the proper venue being admitted to be Robeson. He asserted that nothing could be heard out

(Continued on Fourth Page.)

At a Later Conference Entire Proceeding Was Dismissed

OFF THE DOCKET

The Answer of the Lumberton Lawyers to Judge Peebles Was Slightly Modified and the Whole Matter Arranged and Agreement Signed—Judge Peebles Discharged the Rule of Contempt Against the Lawyers and No Costs Are to be Taxed Against Any Party—Leave to Withdraw Affidavits and Other Papers is Given and all Entries Are to Be Erased.

(Special to The Messenger.)

Raleigh, N. C., June 3.—This evening, Justice Connor, Walker and Douglas were in conference. They had before them the attorneys of Robeson county who were charged with contempt, their attorneys and those for Judge Peebles, and at 8 o'clock all matters were settled. Judge Peebles was present, in the building, but did not meet the members of the Robeson county bar. The answer of the latter was slightly modified and the whole matter is arranged and agreement signed, the case against the attorneys being dismissed.

Judge Walker delivered the following opinion as to the case of Kerr and others:

In re R. C. Southerland, E. W. Kerr and C. F. Carroll.

Habeas corpus at Raleigh. At my request, Justices Douglas and Walker sat with me upon the hearing of the motion for a discharge of the petitioners upon the return of the writ of habeas corpus for the petitioners. The petitioners moved they be discharged and assign among other reasons for the said motion.

1st. That the order made by Judge Peebles, adjudging them guilty of contempt is invalid, because the court was without jurisdiction of the case against N. A. McLean and others.

2nd. That the matters and things set forth in the return do not consititute contempt as defined by the statute law of the State, Code Chapter 14.

3rd. That at the time the order was made by which they were adjudged guilty of contempt and punishment therefor imposed upon them, they were not present in court and had no notice of such proceeding or judgment therein.

The petitioners, in addition to the return made by the respondent, offered in evidence the record in the proceeding before Judge Peebles, entitled in re N. A. McLean and others. The same was admitted, so far as it was relevant to the question of jurisdiction of the court and no further. It was admitted that none of the petitioners were in the presence of the court at the time the affidavits were read which constitute the basis of the order adjudging them guilty of contempt, nor at the time the said order was made or the pnuishment imposed, nor did they or either of them, have any notice of said order or the imposition of said punishment, at the time the same was made and rendered by the court. A number of grounds were assigned by the petitioners in their argument to sustain their contention that the court was without jurisdiction in the proceeding of in re N. A. McLean and others, in which the order was made. We have not deemed it necessary to consider all of them. It is well settled that any person restrained of his liberty by the order or judgment of any court finding him guilty of contempt, is entitled to the writ of habeas corpus, and that upon the return thereof, the court will inquire into the validity of such order or judgment and jurisdiction of court to make same. If it be upon the face of the return or upon the record before the court that the conduct of petitioners is not within the statutes defining contempts, or that the judge is without jurisdiction of the subject matter or person, the petitioner should be discharged from custody. The General Assembly has clearly defined what acts shall constitute contempt, and has further declared "The several acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances, above specified and described, shall be only acts, neglects and omissions of duty, malfeasances, misfeasances and nonfeasances, which shall be the subject of contempt of court. And if there be any parts of common law now in force in this state, which recognized other acts, neglects, omissions of duty, malfeasances, misfeasances and nonfeasances besides those specified and described above, the same are hereby repealed and annulled."

There is no room for construction or controversy in respect to the law upon this subject. This court has expressely held that it is within the power of the legislature to define contempts. Ex Parte Schenck, 63 North Carolina 358. We are clearly of the opinion that the acts with which the petitioners are charged, do not come within the defintion and do not constitute contempt. It is an elementary principle of law without any exception, that no man shall be adjudged guilty of any crime or misdemeanor or be deprived of his life, liberty or property, until he shall have an opportunity to be heard in his defense. It is a principle never to be lost sight of, that no person should be deprived of his liberty or rights without notice and opportunity to defend them. This right is guaranteed by the constitution. Hence it is that no court will give judment against any person, unless such person has opportunity of showing cause against it. Judgment entered up otherwise would be a mere nullidity. Hamilton vs. Adams, 2 Mass 161. We are therefore of the opinion:

1st. That upon the return and record before us, it does not appear that the petitioners are guilty of any contempt of court.

2nd. That the judgment rendered in their absence and without notice and without opportunity to be heard, is invalid, and they are entitled to be discharged from custody.

It is so ordered.

No costs of affidavits will be taxed; other costs will be taxed against the county of Robeson."

The following consent decree was signed by Judge Peebles:

North Carolina, Cumberland County, in Superior court, in re N. A. McLean and others.

It is ordered in this case, by consent, that the answer of each of the respondents be amended by inserting in Article 12 of the answer, after the words "Official character" words "Or personal integrity. It appearing to the court from the answer as thus amended, that each of the respondents has purged himself of all contempt, under the ruling of our Supreme court in the matter of B. F. Moore and others, reported in 63 North Carolina Reports the rule as to each of the said respondents is hereby discharged. No costs to be taxed against any party.

R. B. PEEBLES, Judge.

The following attorneys signed:

C. M. Busbee, C. W. Tillett, U. L. Spence, Robinson & Shaw and John D. Shaw, Jr., for respondents; T. M. Argo, W. H. Day, for Judge Peebles.

Judge Peebles then made the following order:

Cumberland County, Superior Court, In re N. A. McLean et al.

Herein it is ordered by consent that all parties have leave to withdraw any and all affidavits filed by them respectively in the above entitled proceeding and all other papers, including rule and answers and orders and the clerk of the Superior court of Robeson county is hereby directed to erase from his records any entries whatever on his records in the said proceedings.

R. B. PEEBLES, Judge etc.

Thus the famous case goes off the docket.

STEDMAN LEADS IN HALIFAX.

F. D. Winston Endorsed For Lieutenant-Governor—Vote for Supreme Court Justices.

(Special to The Messenger.)

Weldon, N. C., June 3.—The Halifax county convention to-day on a vote for governor gives Stedman thirty-nine and a half and Glenn four and a half. Francis D. Winston was endorsed for Lieutenant-Governor, and gets forty-four votes. For Supreme court judges, Geo. H. Brown gets forty-four, Justice thirty-two and a half and Hoke eleven and a half. Claude Kitchin was endorsed for Congress. W. H. Thorne was nominated for State Senate and T. I. Harrison and Sands Gayle for the House. A full county ticket was nominated, all new men with the exception of the county treasurer and the chairman of the board of county commissioners. Delegates were elected to the state convention. The convention was breezy, but good-natured.

Jefferson Davis Birthday Celebrated in Virginia.

Richmond, Va., June 3.—Jefferson Davis' birthday was observed as a half holiday with the state officials here to-day, and as a whole holiday with the schools of the commonwealth. It was made a public holiday by the state Legislature in 1900. At Lee Camp, Confederate Veterans, Hall to-night, the Daughters of the Confederacy presented "Crosses of Honor" to surviving members of the Confederate army, as is the custom now on this anniversary, and awarded a prize of $10 in gold to the Richmond High School pupil who wrote the best essay on the President of the Confederate States.

WIN A FIGHT

First Line of Port Arthur Outer Fortifications Occupied

BY THE JAPANESE

Only a Feeble Resistance Was Offered by the Russians—Japanese Troops Also Occupying Heights Overlooking Port Arthur, on Which They Have Placed Heavy Artillery. Kuropatkin is Not Disturbed by Official Advice, But He Will Be Left to Develop His Own Plans—There Are Rumors of Another Battle at Port Arthur.

London, June 3.—The Rome correspondent of the Central News telegraphs:

A Tokio dispatch to the Giornale D'Italia says that the Japanese have occupied the first line of the outer fortifications of Port Arthur, after a feeble resistance. The correspondent at Tokio of the news agency Liberas, says that four divisions of Japanese troops have occupied Kwan-Tung Heights, on which they emplaced heavy artillery dominating Port Arthur.

The same correspondent adds that the Russian squadron attempted a sortie but was forced to return, being threatened by the Japanese fleet.

Kuropatkin Can Develop His Own Plans of Campaign.

St. Petersburg, June 3.—The best informed military ciricles attach no importance to the reports that General Kuropatkin has detached a larger force from his army at Liao Yang and dispatched it southward to relieve Port Arthur, and it is distinctly denied that Emperor Nicholas personally ordered such a movement. It can be authoritatively stated that the Emperor's confidence in Kuropatkin is unshaken and his majesty is not attempting to interfere with his plan of campaign. While no such army has been dispatched southward, it is natural that Kuropatkin will do all possible to harrass General Oku's read. The railroad has been kept open as far as Vafangow, 25 miles above Kin Chou, and it is not unlikely that when the Japanese have failed to push through a line across the head of the Liao Tung peninsula, that several thousand Russian troops may be sent down the railroad to impede the Japanese operations and inflict as much damage as possible, as these could easily be withdrawn by railroad if the enemy threatened to cut the line of communications above. Even the loss of a few regiments would be considered cheap if the Japanese operations against Port Arthur were thereby retarded for an appreciable time. However, it is realized that with the Japanese occupation of Port Dalny and Talien-Wan as basis for landing siege guns, and the small force above Kin Chou could accomplish but little and it is now more likely to be withdrawn, destroying the railroad as it retires northward.

For strategic purposes, Kuropatkin may be trying to make the Japanese believe that a movement southward is contemplated, in order to divert Kuroki's attention in that direction.

The impression is being put out in certain quarters here that Kuropatkin is about to take the offensive and that

(Continued on Fifth Page.)

EDICT OF NEGRO SECRET SOCIETY CAUSES THE DEATH OF FIVE.

Greenville, Miss., June 3.—As a result of a fight which occurred on the Sims and Williams plantation at Trial Lake, Miss., thirty miles east of here last night, John Simmis and his manager, named Cato, were killed by negroes and three of the negroes have been killed also. The country is in a state of intense excitement and it is feared further trouble may ensue between the whites and blacks.

The fight started about 10 o'clock last night, when Sims and Cato were shot down in their store by a negro named Samuel Clark. Sims was engaged in checking up his cash when Clark came in. Before he could make any kind of move, Clark raised a Winchester and fired, the shot taking effect first in Sims back and then breaking the collar bone. He died instantly.

Clark immediately turned on Cato, the manager, who was in another part of the store and shot him in the right side, the ball coming out on the left side. Cato staggered into the back of the store and as he reached the door, a negro convict guard named Van Horn who was in waiting struck him over the head with a rifle. Cato died at 7 o'clock this morning and the physician gives it as his opinion that the blow over the head caused his death.

News of the tragedy was immediately sent to Greenville and Sheriff John Crouch, with a posse, went to the scene.

The negroes, Van Horne and Clark, had made their escape before the posse arrived, but the trail of Van Horn was found and he was tracked about a quarter of a mile into the woods. Here another negro convict guard named Mayfield interferred with the posse and he was shot down in his tracks.

Van Horn was captured and taken to Leland, fourteen miles through the state, where he was placed in jail. He remained in jail all night under a strong guard, and at 8:30 o'clock this morning, he was taken out and lynched by the mob.

While the sheriff and posse were busy with VanHorn, the other negro, Sam Clark, returned to Sims store with the intention, it is said, of killing Buck Williams, the other partner; the bookkeeper, named Crow, who was also at work and others. Crow, however, after the previous shooting, had armed himself, and a negro who worked about the place named Aaron Fuller. When Clark made his appearance, he was shot by both Crow and Fuller and killed. It is believed at Trail Lake that the shooting is the outcome of a meeting held in the vicinity of Trail Lake by a negro secret society and that the negroes involved were picked out to do the killing.

DEADLOCK BROKEN BY CHOICE OF C. S. DENEEN FOR GOVERNOR.

Springfield, Ills., June 3.—By making a combination with Charles S. Deneen, L. Sherman, Howland J. Hamlin and John H. Pierce, Governor Yates to-day broke the deadlock in the Republican state convention and brought about the nomination of Deneen for Governor. The nomination was made on the seventy-ninth ballot, which stood:

Yates, 1; Lowden, 522 1-2; Deneen, 957 1-2; Warner, 21.

The combination was the result of a series of conferences held last night and this morning and which were participated in by Yates, Deneen, Hamlin, Sherman and Pierce. The agreement had not been consummated when the convention met at 10 o'clock this morning, and the Yates and Deneen people forced a recess until 2 p. m. Then the parties to the combination met and finally agreed upon Deneen as the candidate. When the convention reconvened, Yates, Hamlin and Sherman withdrew their names from the consideration of the delegates and urged their friends to vote for Deneen.

When the 79th roll-call was ordered, and Adams county led off with "one vote for Yates and nineteen for Deneen," the wildest excitement prevailed. As the roll-call proceeded, it became evident that the new combination in Illinois politics would win, but the original Lowden men for the most part remained firm and went to defeat with him. When the call was completed, Lowden moved to make the nomination unanimous, and Chairman Cannon declared the motion carried. All the pent-up enthusiasm of the delegates manifested itself as Deneen came to the platform and briefly thanked the convention for the honor.

In response to the demands of the assemblage, Colonel Lowden made an address, pleding his support to the ticket. The convention now took up the nomination of a candidate for Lieutenant-Governor; but the leaders of the new combination were not prepared for this and a recess was taken until 8 p. m.

Springfield, Ills., June 3.—At the evening session the making up of the ticket was rapidly proceeded with. L. Y. Sherman, of McDonough, was nominated for Lieutenant-Governor; James A. Rose, of Golconda (present incumbent), for secretary of state; Len Small, of Kankake, for state treasurer; James S. McCullough, of Champaigne (present incumbent), for state auditor; W. H. Stead, of Ottawa, for attorney general.