

# THE MORNING POST.

Vol. VIII.

RALEIGH, N. C., SATURDAY, AUGUST 10, 1901.

No. 11

## COUNCIL'S CASE

A Rehearing Before the Supreme Court

## REVOKES PRECEDENT

Judge Douglas Grants the Order--First Criminal Case to Be Reheard by the Supreme Court

Louis Council, the condemned negro rapist, will not be hanged next Monday.

Justice Douglas of the Supreme Court has issued an order granting a rehearing of Council's case, and the Governor has reprieved the condemned man until November 1, in order that the court may again hear the case.

"This case is remarkable, in that it is the first criminal action which the Supreme Court has ever considered again after having finally passed upon it. Judge Douglas meets the precedent squarely, which he says he believes to be sound."

The case will come up before the court again at the fall meeting. The fact that the case is again placed on the docket does not mean that it will be argued over. If a majority of the court should sustain the precedent of the court relative to criminal cases, Council will be without recourse to save his neck.

The motion for a rehearing, which was made by ex-Judge E. K. Bryan, was approved and endorsed by Mr. E. S. Martin and Mr. George Peschau of the Wilmington Bar. These gentlemen have no connection with the case in any way.

The case has been brought before Governor Aycock time and again, and after delaying the course of the law for several months in order to consider the case in all its phases, finally refused to interfere further. Yesterday he issued the reprieve in order that Council may have the full benefit of the law.

The chief grounds for the rehearing were that one of the jurors did not take the proper oath.

The opinion of Judge Douglas, which is interesting and unique, is given here:

"This is a petition, made in apt time and proper form, to reheat a criminal case wherein the petitioner is under sentence of death. As this case was decided upon a per curiam order while I was absent from the bench, I am equally ignorant of the grounds of the decision and the reasons and authorities influencing the court.

"However, I have no hesitation in saying that in my opinion this is a proper case to be reheard, but I fell great hesitation in ordering it to be docketed, in view of the decision of this court in State vs. Jones, 69 N. C., 16. That case is directly in point and expressly holds that the Supreme Court has no power to sustain a petition to reheat a criminal action.

It is but just to counsel, as well as myself, to say that that decision does not meet my approval, in spite of my respect and admiration for the great court that delivered it.

In fact, it scarcely seemed to satisfy the court itself, as the learned justice writing the opinion, after deciding this vital point against the petitioner, proceeds to discuss the points raised in the petition as fully as if the petition had been allowed.

"That case was decided upon no precedents whatever, as there were admittedly none then, and I am able to find none other since. It is true Jones' case is cited in State vs. Starnes, 94 N. C., 973, 981, and in State vs. Rose, 98 N. C., 629, 630; but these latter cases relate exclusively to motions for new trial for newly discovered evidence, and have no apparent bearing on the question of reheat.

"The reasons given by the court are as follows: 'Neither the learned counsel for the prisoner nor the Attorney General has been able to cite any authority showing that we have the power to reheat the case. In equity cases and in civil actions the practice has been common, but in criminal cases never to our knowledge. In the former cases this court makes decrees and passes judgments, which may be reviewed. But in criminal case we do not pass judgment. Such cases are sent up for an opinion only, which we certify to the court below, and then our jurisdiction ends. Whatever force these reasons might then have had, they have none now to my mind. The court constantly grants rehearings in civil actions where it passes no judgment whatever, and makes no decree. Rules 52 and 53, providing for rehearings, make no distinction between civil and criminal cases, and I do not see why.'

"If the title to a chicken were involved I could grant a rehearing, but as a human life is at stake I am utterly powerless. To my mind such a distinction finds no just foundations in law, in public policy or in humanity. The rights of property can never be more sacred than the security of the person, as they have no independent existence, but exist only in relation to the owner. The guilt or innocence of the prisoner is not for me to decide, nor can I properly consider the facts that the judge that tried the prisoner has grave doubts of his guilt, that the solicitor who prosecuted does not believe that he is guilty, and that the jury that convicted him rendered a verdict only after a distinct understanding among themselves, and with the court that it should be coupled with a recommendation to mercy. These facts, however strong and significant, appeal only to executive clemency, and not to judicial action.

"However much a justice may dissent from the decisions of the court, and however full his right of dissent when sitting with the court, he is bound by them when acting in his individual capacity. But docketing a case is not overriding any opinion that may be involved.

"It is simply bringing the matter before the court for such action as it may see fit to take. In no other way whatever can it be brought before the court. Even if the court were in favor of a rehearing, it could not act under its rules unless some individual judge took

the responsibility of ordering the case to be docketed.

"Feeling as I do, I think the court should have an opportunity to pass upon the question, which can never be presented more clearly or more forcibly.

"I am somewhat influenced in this by the fact that the Governor frankly states that he will reprieve the prisoner if I order his petition to be docketed, but not otherwise; and by the further fact that eminent members of the bar think that criminal cases can be heard, a view in which I understand his Excellency to fully concur.

"Unless his case is docketed, the petitioner will be hung next Monday, and this court would then be powerless to correct any error that may exist, no matter how great or manifest.

"The petitioner has been convicted of what is probably regarded as the highest crime known to our law, and if guilty should be punished.

"But he is entitled to a fair trial, and if innocent his execution would inflict a wrong which eternity alone can repair. Under such circumstances I feel it my duty to act, no matter how great may be my reluctance or the responsibility it involves. The clerk will docket this case and file the opinion with the petition. He will also issue the proper notices, including one to the Governor.

"This 8th day of August, 1901.

"R. M. DOUGLAS,

"Associate Justice."

## WANTS TO COME IN

Winston Ball Teams Talks of Joining the League

Winston-Salem, N. C., August 9.—Special.

A movement has been started for Winston's ball team to become a member of the North Carolina league next year.

Arrangements have been made for three games here with Madison, Asheville also wants to play three or four games here this month.

The estimated receipts from the Masonic picnic at Mocksville yesterday are four hundred dollars. One hundred dollars was cleared from the excursion run down Winston.

## A HITCH AGAIN

England Refuses to Sign the Final Protocol

## DELAY IS SERIOUS

The Trouble Seems to Be About the Chinese Tariff--Other Questions the British Want Settled

Washington, August 9.—The persistent reports to the effect that the powers had become deadlocked on the matter of signing the final protocol establishing peaceful relations with the Chinese government were corroborated today by a cablegram from W. W. Rockhill, special American commissioner at Pekin.

Mr. Rockhill advises the State Department that the delay is a serious one and that it is due to objections raised by the representatives of Great Britain against the proposed international commission for the revision of the Chinese tariff, which is necessary in order to provide funds with which the Celestial government may meet its indemnity obligations to the powers.

The exact nature of the objection filed by England is not known. It is understood that it has been made only in general terms and that no specific reasons for thus blocking the protocol arrangements are given.

It also appears that the British government asks for a reconsideration of some clauses concerning which no agreement between the nations concerned had heretofore been reached, owing to the strenuous opposition of several of the powers.

It is feared here that the attitude of the British government will cause a further and very unwelcome delay in the efforts to settle the Chinese problem. Negotiations had reached a very favorable stage when the protocol was ready for the approval of the nations supposed to be parties to it.

It is understood that Mr. Rockhill's dispatch is lacking in many details that the State Department wishes to have and that he will be instructed to report on the matter more fully at the earliest possible moment.

## Tug Sinks a Row Boat

New York, Aug. 9.—The tug boat Berne, of the Lehigh Valley Railroad, ran down one of the row boats used to ferry passengers across the Washington gap, as the outlet north of the Lehigh Valley depot in Jersey City is known, at 7 o'clock this morning, throwing the nineteen passengers that were in the small boat at the time into the water. So far as known all were rescued. The small ferry boat was stove in and sank. The tug was stopped at once and the work of rescue began.

## Strike Situation Unchanged

Pittsburgh, Aug. 9.—The strike situation does not seem to have definitely changed. Mr. Gompers had not stated up to late hour this afternoon what his action would be. There are persistent rumors of coming arbitration, but they have not yet been traced to any reliable source.

## QUAKER MEETING

Yearly Assemblage of Friends at High Point

## BUSY DAY OF SESSION

Many Matters of Interest to the Society in North Carolina and at Large Receive Earnest Consideration

High Point, N. C., August 9.—Special. The fourth day at the yearly meeting of Friends was opened this morning at 10 o'clock with the reading of a letter addressed to the clerk from Prof. Joseph Moore, of Earlham College, Richmond, Ind., in which he expressed a warm and deep interest in the Friends of the North Carolina yearly meeting. Prof. Moore spent four years in North Carolina as professor of natural science in Guilford College from 1884 to 1888.

Mr. John E. Ray, of Raleigh, superintendent of the blind institution, was present and made a brief address in behalf of the institution.

Epistles were read from New England, Oregon, Ohio, Canada and California yearly meetings, all of which contained salutations of love for the North Carolina yearly meeting and gave some account of the religious work in which these yearly meetings are engaged.

The subject of the constitution and uniform discipline which should embrace all the yearly meetings in America and which should serve as a basis of unity for them all occupied most of the morning session. In the afternoon the consideration of the proposed uniform discipline was resumed, and after a long discussion the meeting concluded it was wise to lay the matter over until next year. If the uniform discipline should be adopted by seven yearly meetings in America it would go into effect. It establishes what is called a five years' meeting to be constituted of delegates from all yearly meetings adopting the constitution and discipline. This five years' meeting will consider any questions which affect the interests of the society of Friends in this country and will serve as a basis of unity in any public utterances that American Friends might wish to put forth.

A committee was appointed to prepare an epistle of greeting to all the yearly meetings in correspondence with the North Carolina yearly meeting, which includes the yearly meetings of London and Dublin.

The next subject was the Blue Ridge mission committee, which made an interesting and impressive report of the work which is being done in India by Miss Annie V. Edgerton, the missionary supported in that country by Friends. An interesting letter was read from Miss Edgerton, giving an account of her work in that country and making an appeal for adequate support of the work. A subscription was taken for that purpose. The yearly meeting will make an appropriation for the same purpose.

Associate members of the American Friends' board of foreign missions submitted a report of the African industrial mission in which the board is engaged.

The meeting tonight was held on the subject of foreign missions and was addressed by Mr. John B. Garrett of Philadelphia, and others.

Tomorrow morning a report of the orphanage committee will be submitted and in the afternoon a report of the trustees of Guilford College will be made. At night a general educational meeting will be held at 8 o'clock at which Mr. John B. Garrett and Prof. Chas. Nealin of Wilmington College, Ohio, will make addresses. The attendance is very large and much interest is taken.

## Dumont Orders a New Flyer

Paris, August 9.—M. Santos Dumont, finding that his dirigible balloon has sustained so much damage that it is impossible to attempt to repair it, has ordered a new one, work on which has already begun. The new envelope will have about the same volume as the one which exploded yesterday, but, instead of being cylindrical in form, it will be ellipsoidal. M. LaChambre, who is making it, constructed the balloon for the Andre polar expedition. He promises that the new envelope will be ready on September 1.

## Further Reductions

Washington, Aug. 9.—Preparations are underway by the War Department to make a further reduction in the military forces in the Philippines. Just how much reduction will be made cannot be determined until the department hears from General Chaffee. It has already been decided, however, to bring back to this country just as soon as practicable the remaining artillery organizations in the Philippines.

## ALL LOOKS ROSY

Spencer Blackburn a Hopeful Young Man

## HEARS FROM FRANKLIN

The Louisburg Meeting Encourages Him to Believe That the Democrats Are About to Flop Into His Party

Washington, August 9.—Special. Congressman Blackburn, of the Winston district, has some decided views on political conditions in North Carolina, and goes so far as to predict in cold type that the Republicans will in a short time acquire political supremacy in the State and in Congress. The fact that Mr. Blackburn is a new member may account for his rainbow chasing views. He said today:

"The elimination of the negro question from politics in the North State will, in my opinion, result eventually in greatly added strength to the Republican party there. The people of the State have evidently reached the conclusion that old-time prejudices must be laid aside and that votes must be cast for party candidates standing upon platforms which conduce to the best interests of the community.

"An important meeting was held at Louisburg a few days ago indicating this new spirit. A great many business men attended this meeting, nearly all of whom had previously been of the Democratic faith. It was the sense of the meeting that the platform adopted at the last Republican national convention should be endorsed and that hereafter men should be favored for elective office who were prepared to stand by principles which insured the subservience of the business interests of the State.

"That is to say, the meeting decided virtually to leave the Democratic party and in the future vote the Republican ticket. This, to my mind, indicates that a revolution in politics is about to occur in North Carolina. It would certainly seem so if other Democrats of the State were to follow in the path hewed by the Louisburg meeting, and there is no indication that they will not do so.

"Next year the State will elect a legislative and judicial ticket. The Republicans of the State have strong hopes of being successful in this campaign. It is certain that a great many men who have heretofore voted the Democratic ticket will vote for the Republican candidates."

Postmasters appointed: D. M. Sumner at Skyland, Buncombe county, vice W. W. Long, removed; J. C. Edwards at Welch, Graham county, vice A. M. Edwards, resigned; J. K. Exum at Four Oaks, Johnson county, vice Ransom Durham removed; J. B. Buchanan, at Jonesboro, Moore county, vice S. H. Buchanan removed; S. T. Hall, at Progress, Randolph county, vice E. E. Pugh, removed.

A new postoffice has been established at Lagoon, Bladen county, with Katie B. Smith as postmaster; at Funston, Brunswick county, with Isham D. Harrelson as postmaster; at Naylor, Sampson county, with Stephen D. Howley, as postmaster; at Red Cliff, Halifax county, with Whit A. Johnson as postmaster.

Rural free delivery has been ordered established October 1, at Lumerton, Robeson county, with one carrier; length of route, 25 miles; population served, 660; carrier, R. E. L. Prevatt.

## JIM HARRIS HANGED

A Tar Heel Negro Pays the Penalty for Murder

Bennettsville, S. C., August 9.—Special. Notwithstanding it was known that Jim Harris would be hanged today within the jail enclosure one thousand people were present hoping to witness the execution. Many people came from North Carolina and early in the morning countrymen began to arrive. The gallows was erected in the jail yard behind a very high wall in front of the door leading from the cells. Only about a dozen besides the reporters and assistants were admitted.

The rope was cut by Sheriff Green with the axe with which Harris killed Carter. The drop fell at 12 o'clock and at the expiration of 36 minutes he was pronounced dead. The dead body was turned over to relatives of the deceased and was immediately taken to Clio, this county, for burial.

During the fall of 1899 Jim Harris, a notorious colored desperado, committed burglary and larceny in this county, but escaped to North Carolina, his native State, where he subsequently was captured in Greensboro and brought back to the county of his crime, where he was tried, convicted and sentenced to two years on the county chain gang. He was serving this sentence when on the 20th of February, 1900, while on work on the public roads near the Pee Dee river, as Mr. Amos Carter, the captain of the chain gang had his back to Harris, the desperado struck the captain

a heavy blow on the back of the head with an axe, from the effects of which he died in a few hours. Harris seized the guard's gun, and with axe in hand in company with two other members of the gang, entered the river swamps, where they cut away the shackles and made their escape.

Last spring Sheriff Green received a telegram from Laurens county, S. C., stating that Jim Harris was there in the county chain gang. The sheriff easily identified his man and brought him back.

The trial took place at the recent June term.

## STEEL TRUST RETALIATES

One of Its Largest Mills to Be Moved from McKeesport

Pittsburg, August 9.—The United States Steel Corporation issued an order today directing that the Dewees Wood plant at McKeesport be dismantled and removed to the Kiskiminetas Valley. The decision is ascribed to the hostility of the people of McKeesport.

The official announcement of the decision was made by Persifer F. Smith, district manager of the American Sheet Steel Company. He said:

"I have orders from President McMurtry of the American Sheet Steel Company, to tear down at once the Dewees Wood plant at McKeesport and remove the same to Kiskiminetas Valley. This I shall proceed to do immediately."

The Dewees Wood plant is one of the oldest and best known plants in Pennsylvania. It was founded nearly 40 years ago, and its shops and mills covered from 12 to 14 acres. It employed an average of 900 men, but in the busiest times the pay roll carried several million dollars.

## OUGHT TO BE HANGED

McLaurin Roundly Denounced as a Traitor

## JINGLES HANNA'S COIN

Tillman Exceedingly Fierce in Attacking His Rival--Shadow of the Negro Voter On the Wall

Columbia, S. C., Aug. 9.—This was the last day of the big political rally at Union, and the heavy artillery was reserved for the final attack upon "commercial Democracy." It was vehemently urged that McLaurin's rule would be worse than negro domination. Senator Tillman and former Governor John Gary Evans, who was defeated by McLaurin for the Senate, made the most sensational speeches. Evans added that McLaurin has Mark Hanna's money jingling in his pockets, and he ought to be hanged. He insisted that another traitor should not be put into McLaurin's seat.

Congressman Tammie, who came into prominence in Congress by blocking private pension