

ARGUMENT OPENED IN THE GATTIS-KILGO CASE

Oxford, N. C., Nov. 28.—Special.—At noon today argument before the jury in the Gattis-Kilgo trial began.

- 1. Did defendants publish or cause to be published the defamatory matter set out in section 4 of complaint?
2. Was defamatory publication false?
3. Was same malicious?
4. What damage is plaintiff entitled to recover for such wrong and injury?

In determining upon these issues Judge Shaw said that he would charge the jury to answer the first issue "Yes," and as to the third he would charge that if the defamatory publication be false, did Duke and Odell know they were false or have opportunity to ascertain their falsity?

There will be three speeches by counsel for the defense, and four for the plaintiff.

The argument was opened about noon by Mr. T. T. Hicks for the defense, and it is expected that it will require until tomorrow evening to finish the argument and charge the jury.

When counsel for the plaintiff rested their case, Judge Winston, of counsel for the defense, arose and entered a joint and several demurrers to the evidence, and moved jointly and severally for a non-suit for and in behalf of each defendant.

Mr. Hicks, counsel for defense, said, in commenting before the judge, upon their action and the groundlessness of the prosecution, that no good could come of the further prosecution of the case, and it ought to be hence and be no more on this glorious Thanksgiving day.

Pending the argument of legal points at issue, the jury retired and Mr. Hicks discussed at length the position of the defense and the "three leas" of the prosecution—false accusations; known to be false; acted by malice.

Ex-Judge Graham, of plaintiff's counsel, argued as to evidence of the false charges against the plaintiff and against the demurrer and non-suit prayed for by the defense.

There was extensive argument by Winston and Hicks for the defense and Graham, Guthrie and Biggs of plaintiff's counsel.

Finally Judge Shaw announced that he would not allow the demurrer by the defense or the prayer for non-suit, and that he held the board of Trinity trustees as a trial court hearing the Kilgo-Clark controversy was an absolutely privileged court so that all the evidence heretofore submitted as designed to show malice against the plaintiff Gattis during the trial was improper as was also that as to the demurrer and non-suit in conducting the defense in that court. This ruling made incompetent fully as much as nine-tenths of the evidence which has been heard during this trial, and was a decided victory for the counsel for defense.

Mr. T. T. Hicks, in opening the argument for the defense, spoke over three hours, about one-third of his time being consumed in reading from the Trinity trustees trial pamphlet. His speech covered every feature of the case. He took

the position that nothing was left in the case. After with search of several days for evidence of malice the plaintiff had failed, the Supreme Court having declared that the words complained of were inferences of fact from the evidence not, therefore, he read the declaration that the plaintiff sought in vain for evidence of malice outside of Kilgo's speech.

Mr. Hicks referred at length to the character of the charges preferred against Kilgo and the trustees of the college. He showed the necessity for the court saying was proper. He read the evidence of the seventeen witnesses in South Carolina, including a bishop, governor, United States senator, presiding character of Dr. Kilgo was the highest as a minister and a man. He said that all this was heard by the trustees of Trinity and justified their conclusions and the speech of Dr. Kilgo. He argued that the testimony of Gattis on that occasion affecting Kilgo's South Carolina reputation was wholly untrue, being overcome by the weight of evidence, and that Kilgo's charge that Gattis was the "original maligner" was fully justified.

Mr. Hicks took the position that there was practically no evidence to prove the other charges made by Judge Clark against Kilgo. He said it was the duty of the plaintiff to show that what Kilgo said was false and known by defendant to be false; but argued that it was clearly shown that what Kilgo said was true, and his honor, under the ruling of the Supreme Court, should not submit an issue as to the falsity of the publication. Mr. Hicks contended that there was not a scintilla of evidence that the publication was made from malice or ill will to any one who was offended; that there was no evidence that either Kilgo, Duke or Odell ever referred to plaintiff in any way except in Dr. Kilgo's speech, or that either of defendants ever circulated a single pamphlet.

The court recess for supper after Mr. Hicks' argument. J. C. Biggs began his speech for the plaintiff as soon as court reconvened for the night session. He made a statement of the issues. He said the plaintiff was suing for damages by publication of Kilgo's speech, and that plaintiff had the burden to prove that defendants did not have the right to make the publication. The plaintiff must show malice in the publication, must show that defendants sent forth the pamphlet without investigating as to the truth of the charges. He argued that to prove that defendants published it in a fit of madness is sufficient to prove malice. He reviewed the history of the suit. He reviewed Gattis' testimony before the Trinity trustees and argued that the subsequent attack by Kilgo in his speech was unjustified. He dwelt at length on the charge by Kilgo that in Gattis' place of business un-

christian gossip was retailed. He argued to acquit Gattis of the charge of being a gossip or falsifier. Many paragraphs of Kilgo's speech were read. Capital was made of the defense not putting witnesses on the stand. He said he did not know why Kilgo, Duke and Odell did not testify.

Counsel for the defense objected to such reference to defendants in argument. The judge overruled the objection and the defense excepted.

Proceeding, Mr. Biggs said the defendants had opportunity to go on the stand and swear as to christian conduct in Gattis' store. He said that one defendant (Duke) seemed not to have interest enough in the case to be present. He admitted that the defense consisted of the affidavits, etc., in the pamphlet, contained enough for the defense. Mr. Biggs argued at length to show malice on the part of defendants in making the publication and not investigating as to the truthfulness or falsity of the charges therein against Gattis. Argument was offered as to the introduction of evidence charging that Gattis is an opium eater and defrauder of an insurance company as showing malice by defendants against Gattis. He said these charges were made to make it appear that the charge about christian conduct at his store was true.

Mr. Biggs argued that the presence of the three defendants in the trustees' meeting when the resolutions were passed allowing papers to publish the proceedings of the Kilgo-Clark trial, made them liable for damages by the publication. Exception was made by counsel for the defense to the reference by Mr. Biggs to publication, in newspapers, as neither defendant was connected by evidence with such publication. The judge said he had not passed on the competency of such evidence and would possibly withdraw Mr. Biggs' argument later.

In reference to the evidence of malice Mr. Biggs argued that if all the evidence except the publication as to unchristian conduct in the store and the charge of being a slanderer were withdrawn, it would be sufficient to establish malice.

In conclusion he told the jury if their answer to the first three issues was "Yes," then they would come down to the question of damages, and said the plaintiff had two grounds for damages—injury to business and injury to character. He said plaintiff was deprived of a comfortable living, even if his liabilities were about equal to his assets, as the defense contended. He dwelt also on injury to character. Mr. Biggs closed at 10 o'clock and the court took a recess until 9:15 tomorrow morning.

Tomorrow morning A. A. Hicks, of Oxford, will speak for plaintiff. B. S. Royster, of Oxford, will follow for the defense. A. W. Graham and W. A. Guthrie will speak for the plaintiff and Judge Winston will close the speaking for the defense.

WOMAN DESERTED BY HER COMPANION IN SIN

Charlotte, N. C., Nov. 28.—Special.—A young woman who arrived here Sunday night with a man giving his name as John Swords, says the man knocked her down last night and took all her money and a highly-prized ring and skipped. The woman had been travelling with Swords as his wife, but now claims that he had led her astray under promise of marriage, which promise he failed to keep. The young woman is only eighteen years old and of good appearance. She says her betrayer met her in Philadelphia. She has been making a living by selling soap.

CANNOT REACH THE CASE

Russian Minister's Reply to Appeal of Boers

The Hague, Nov. 28.—Count De Sturve, the Russian minister to Holland, has replied as follows to the Boer appeal for intervention by the court of arbitration: "I am of the opinion that the executive council of the court of arbitration is not competent to give effect to the request addressed to it by the representatives of the South African republics, but I believe I can declare that my government finds it very regrettable that the differences between Great Britain and the South African republics cannot be submitted to the court of arbitration."

STRUCK A ROCK

The Transport Wright Sunk but All on Board Saved

Manila, Nov. 28.—The United States transport Wright has struck a rock in Lamun Bay, near the island of Samar, and sunk in 15 feet of water. The crew and most of the cargo were saved. Brigadier General J. K. Smith, commanding at Samar, telegraphs that the Wright can probably be raised.

Terry McGovern Meets More Than His Match

Young Corbett Puts the Feather-weight Champion to Sleep in Two Rounds

Hartford, Conn., Nov. 28.—Terry McGovern, who put to sleep the champion featherweight pugilist of the world, and won his title from George Dixon of Boston, two years ago, at the Broadway Athletic Club, New York, was beaten out in two rounds today.

The sporting men of America received this information this afternoon with what may have been a slight suspicion that all was not right with the glove fight at the Nutmeg Athletic Club today, between the hitherto invincible Brooklynite and a comparatively new comer in pugilism, William Rothwell, of Denver, known more popularly as "Young Corbett." But to the 4,500 spectators who saw the mill there was no doubt about the fatness of McGovern's totally unexpected downfall.

Before going into details it is necessary to say that McGovern met a boy who, in the first place, was not afraid of him. Then, again, McGovern found in his antagonist a clearer head, strong, quick and shifty boxer, who had a tremendous punch, and especially with the right hand.

Holding young Corbett too cheaply was possibly allowing his personal pride to get away with his best judgment.

McGovern put up a fight when the crucial test came that made his friends and backers throw up their hands in surprise. In the words of dozens of New York and Boston sporting men who saw the mill, McGovern fought like an amateur instead of a champion.

He completely lost his head and became rattled beyond measure when, under Corbett's hotest fire, in the middle of the second round, there was no shadow of doubt in the estimation of the experts.

Unable to frighten his man, or beat him down in the first round, and at the same time receiving punishment that showed the Denver fighter to be a formidable opponent, McGovern concluded to throw science to the winds in the second round and simply slug his adversary to defeat. In so doing, McGovern was wise in wide extent, but he was ingivive and take fighting. Corbett, nothing daunted, met him in kind. It was a slugging match of such swiftness and so much danger for either man that the crowd was simply crazy.

Suddenly Corbett saw an opening and, quick as a flash, he whipped in a terrific right hand upper cut that caught McGovern squarely on the point of the jaw. It was a punch that would knock out an ordinary boxer lacking proper physique to withstand it, but in Terry's case it merely dropped him to the floor.

It was a clean knock down, and McGovern, for the first time in his life, was groggy. He struggled quickly to his feet after a count of seven, and steadied himself a moment by hanging on to the ropes. His brain and sight were temporarily clouded and his power was for the moment gone, but the fighting instinct was too much for the befuddled champion, and he rushed into the fray again, fighting like a hyena. He should have taken the defensive by using his feet and clinching at every opportunity until his faculty and strength had returned; but instead of that he bored in with an energy that in spite of Terry's condition was something awful.

Though Corbett, cool-headed, calculating and as powerful as a lion, met Terry blow for blow, he was soon in trouble himself. Both were groggy in a moment, and it was anybody's fight, the question being who would land the first blow. Terry Corbett, as a last desperate chance, swung a fearful left for the head. He caught Terry on the ear and made him reel.

Corbett was instantly ablaze with renewed courage and physical strength. With a right that had the force of a sledge hammer, he reached the point of the jaw. That was a sear, for McGovern fell over on his back and was counted out by the referee.

The result came as a complete surprise to everybody. For a moment nobody knew what to make of it except that Terry was beaten, and that there was a new featherweight champion. But among the throng of sporting men there was not to be a cry of "fake." The fight did not have any indications of double dealing or wrong doing. It was simply a case of the sporting fraternity overestimating McGovern, and underestimating Corbett. Whether McGovern was in his best physical condition is a matter that will provoke discussion. Men who are unjudged and who saw the former champion at his training quarters were not backward in declaring that he seemed a trifle drawn when he let up his work.

Perhaps McGovern was overconfident. There are many who believe that he was, and that his advisers jollied him into the belief that in young Corbett he would find an easy mark. For that matter there was a story in circulation here today that Corbett was actually hired by Sam Harris, the manager of McGovern, to come here and box the champion. According to the yarn Corbett signed a contract which called for \$2,500 and expenses, win or lose, the money to be paid directly after the fight. There was no agreement as to a decision, but it was simply a scheme by Harris to get a match for Terry and incidentally big wire receipts.

Of course Corbett was to do the best he knew how, and Terry the same. The fact that there was no betting to speak of on the result of the fight and that odds of \$4 to \$1 on McGovern went begging when the men got into the ring, is pretty good evidence that there was no job. Harris and McGovern between them had \$5,000 to bet, but they could not get it down.

After the mill there was one opinion that could be heard on all sides. It was that McGovern was in no shape and that he was overconfident. On the style displayed by him there was much caustic criticism. He did not adopt the crouching attitude that helped him so materially in his fights with Dixon, Frank Erne, Pedlar Palmer, Joe Gans, Oscar Gardner and other good men. He did nothing with his left hand. It was a most surprising thing to those who knew him. Then, again, his swings with the right were wild and poorly timed. In point of defense McGovern was away off.

The mill was one of the fastest ever seen in the east. There was not a moment of sparring from the first sound of the gong. It was fought all the way, the blow flying back and forth so swiftly that they could not be counted.

After the battle Jim Kennedy, on behalf of the Twentieth Century Athletic Club of San Francisco, offered a purse of \$10,000 for another battle between the men.

Today's fight was slated to go twenty rounds at 125 pounds, weighing in at 10 o'clock in the morning, both men scaling at the time at the required limit. They fought for fifty per cent of the gross gate receipts, amounting to about \$20,000, the winner to receive sixty-five per cent and the loser thirty-five per cent.

WELTER WEIGHT WALCOTT

Baltimore, Nov. 28.—The fight for the welter-weight championship between young Peter Jackson and Joe Walcott before the Fureka Athletic Club, went the limit of twenty rounds and Walcott received the decision. It was his battle from start to finish, and it could soon be seen that he outclassed Jackson, although he was unable to put him out. Both men were in perfect condition.

EIGHTY KILLED IN BAD SMASH-UP

Trains Running at High Speed When the Crash Came—Many Injured Will Die

Detroit, Nov. 28.—So far as known the head-on collision on the Wabash Railroad, near Seneca, a little station 70 miles southeast of here, resulted in the death of eighty persons. Fully 150 were injured, twenty-five of them severely. Many of these may die. The disaster is the most appalling in the history of Michigan railroading, not excepting the awful wreck on the Grand Trunk road at Barrie Creek during the World's Fair in 1893.

Two passenger trains, both heavily loaded, one drawn by two engines, met while running at full speed. The cars were smashed and the bodies were so badly scorched that identification will be impossible.

Of the dead fifty are Italian immigrants who were on the west-bound train No. 13. It is estimated that there were fifty persons in the day car of train No. 3 east-bound, and of these thirty are dead.

All sources of information are in control of the Wabash officials, and it is alleged that the details of the disaster have been suppressed as far as the railroad men can control the wires.

Train loads of injured were taken to Adrian, Mich., Peru, Ind., and Montpelier, Ohio. The trains which collided were the fastest on the road and they were probably going no less than fifty miles an hour when the crash came.

The cause of the wreck was a misreading of orders by Engineer Strong, of the Continental Limited. The order, it is claimed, read "Pass at Seneca," but Strong understood it to read "Sand Creek." The conductor of the train did not know that the engineer had misunderstood the order and supposed that his train was going on a siding. Finding that the train was running rapidly, the conductor put on the airbrakes himself, but it was too late. The two trains crashed and the cars on the west-bound train were crumpled up in a heap of ruins.

Engineer Strong stated in a positive terms today that his orders directed him to pass train 13 and 3 (the latter, closely followed No. 13 from Detroit) at Sand Creek. Strong saw the headlight on No. 13 four or five miles ahead, but he supposed the train was ahead-tracked at Sand Creek, waiting for his train to pass.

"The glare of the powerful electric headlight," he added, "made it impossible to see the exact location of the other train. My fireman and I both jumped from the right-hand gangway."

To add to the horror, the wreckage caught fire instantly and in a short time the bodies of the dead and those of the injured who were pinned down were being burned. The scene which followed was heartrending.

Holton Charges Referred to the Attorney General

Washington, Nov. 28.—The President has referred to Attorney General Knox the charges preferred against United States Attorney Holton by Ellis. In due course Mr. Holton will receive no official standing with the President.

Mr. Ellis is not known at the department, but is said to be, as stated, a reputable cigar manufacturer of New York. It is suspected, however, that there is some personal animus in the case, especially as the charges are not preferred that the ends of justice may be served, but that Mr. Holton's appointment may be prevented.

Miss Stone, the Missionary, is Said to Be Dead

Constantinople, Nov. 28.—A report has gained wide circulation here to the effect that Miss Ellen M. Stone, the American missionary who was abducted by Bulgarian brigands, and Madame Tsilka, her companion in captivity, are both dead.

Information bearing upon the matter has been received by the Turkish officials, but it is not known how reliable the sources are. Some persons are inclined to believe that the rumor of the death of the captives is simply a revival of the report in circulation here some time ago.

The American representatives decline to credit the story until they have authentic advices. The report has caused considerable excitement here where the negotiations for the ransom of the American woman have been watched with the closest interest.

The latest report states that the bodies of the unfortunate women were interred by the brigands at Aldere. It is said here that there are many Turkish officials who refuse to believe that the captives have perished.

London, Nov. 28.—A news agency dispatch from Constantinople says that Miss Ellen M. Stone, the American missionary, and Madame Tsilka are both dead.

Washington, Nov. 28.—The only report pending to confirm the information from London that Miss Stone and Madame Tsilka are dead came to the State Department last night from Mr. Eddy, at Tera. He says that a report from the viceroy of Salonica has reached the American legation that Miss Stone and Madame Tsilka died near Myerzoja Mills, near Vezneje.

It is reported that Madame Tsilka died from physical weakness attending her condition, and Miss Stone from Mr. Eddy adds that neither he nor Consul General Dickinson placed confidence in the report.

THANKSGIVING FOOT BALL GAMES

Pennsylvania Makes a Disastrous Season

Philadelphia, Nov. 28.—For the first time in nine years Cornell defeated Pennsylvania today on Franklin field by the score of 24 to 6. Nine years ago the games with Cornell were begun, and Pennsylvania has always been able to pull out a victory against Cornell, no matter how unprosperous her season until this year. It was the closing game for Pennsylvania of this season, which has been the most disastrous one for many years.

The Ithacans came here confident of winning. Pennsylvania played valiantly, but to no purpose. She was outplayed and could not stop the Ithacans in their rushes across the goal line. It was end runs that won for Cornell. The New Yorkers started around the outside of the line in beautiful style, the runner carrying the ball behind interference that the Quakers were unable to break up.

It was a holiday crowd on the stands and fully 20,000 braved the cold and the high wind to view the game. For a time the contest was interesting, but even Philadelphia lovers of football knew they have had enough. Before the game came to an end the crowds swarmed on the field. This is a thing that the crowd has never done before at Pennsylvania, and it was totally unlooked for. However, the day

Clemson Beats the Tar Heels in Charlotte

Charlotte, N. C., Nov. 28.—Special.—Between two and three thousand spectators attended the foot ball game here this afternoon between Clemson College and University of North Carolina. The game began at three p. m. From the very start it was evident that Carolina had a formidable enemy to fight.

In the first half Clemson kicked to Carolina. A battle royal then began between the teams. Carolina lost the ball to Clemson who gradually worked to goal, making a touchdown. Clemson failed to kick goal. Carr kicked to Clemson. The ball then changed sides several times as the game moved up or down the field. Clemson finally made a second touchdown, but failed to kick goal. Carolina's first touchdown then followed by Gulick. Clemson then made another touchdown and kicked goal. Score 16 to 5.

In the second half Carolina failed to score. Clemson made one more touchdown, kicking goal. The final score was 22 to 10.

Carolina was outplayed all around. Clemson seemed to be better trained and worked together with telling effect. Carolina made most of her gains by pounding Clemson's center. This was one of the features of the game. Council played the game for Carolina. The line-up was as follows:

Clemson—Sneed, center; Breedin, left guard; Forsythe (A. J.), right guard; Da Costa, left tackle; Shealy, right tackle; Forsyth (W. C.), left end; Sadler, right end; Pearman, left half back; Hunter, right half back; Douthitt (Capt.), full back; Lewis, quarter back.

Carolina—Jones, H., center; Jones (L.) and Brem, left guard; Hester, right guard; Foust and Jones (A.), left tackle; Council, right tackle; Cox, left end; Williams, right end; Berkeley, Mackley and Coeke, left half back; Gulick, right half back; Carr (A. M.) and Donnelly, full back; Carr (W. F., Capt.), quarter back.

Fighting Continues on the Isthmus of Panama

Colon, Colombia, Nov. 28.—Last evening a railroad train was stopped on the line in order that the killed and wounded could be removed from the track. American marines assisted in carrying the bodies. The situation remains the same as yesterday. The opposing forces are facing each other at Buena Vista.

The Colombian gunboat General Pinzon returned to Colon today, towing a prize, a laden schooner of the name of Maria Christina.

It is reported that Porto Bello was much damaged by the bombardment. The American warships here, the Mariachias and the Marietta, will land a large force here when the town is in danger. The British cruiser Tribune will land one hundred men at the same time to prevent pillaging.

In the fight at Buena Vista today the Liberals lost the position. Captain Perry, of the American battleship Iowa, and General Alban, leader of the government troops, have arrived here in an armored train. They, with the captain of the American, English and French warships and the Liberal chiefs, held a conference at the railroad office. Subsequently the conferees adjourned to the gunboat Marietta, where it was

agreed that the Liberal forces between Colon and Bahia should surrender within their arms, their life and liberty being guaranteed by the government. The foreign warships will land a large force of men tonight or tomorrow to preserve order in the town.

Washington, Nov. 28.—The State Department received a cablegram from Consul General Gunder at Panama, dated today, stating that the Colombians are fighting along the line of railway. No details are given.

Captain Perry, of the battleship Iowa, this morning reported to the Secretary of the Navy that a decisive engagement between the insurgents and government troops was expected today in Colombia, near Buena Vista. His cablegram reads as follows:

"Panama, Nov. 28.—Fierce fighting yesterday near Buena Vista. Stopped firing while passenger trains passed. Decisive engagement expected today about the same place. PERRY."

Solicitor McLean Dead

Fayetteville, N. C., Nov. 28.—Special.—C. M. McLean, of Bladen county, solicitor

Gives Up Wife and Crown

Berlin, Nov. 28.—The Vossische Zeitung says that Crown Prince Ferdinand of Romania and his wife, formerly Princess Marie, of Saxe-Coburg and Gotha, have agreed upon a divorce, and that the Crown Prince will renounce the succession to the crown.

Wallace Gets Thirty Years

Wilmington, N. C., Nov. 28.—Special.—After remaining out fifteen hours the jury in the case of John Wallace, who murdered another negro here last summer, returned a verdict of murder in the second degree and Judge Allen sentenced him to thirty years in the penitentiary.

GLOOMY OUTLOOK

Richardson on the Prospects for Legislation

Washington, Nov. 28.—In the opinion of Representative James D. Richardson prospects for the passage of a River and Harbor bill, the Nicaraguan Canal and an Omnibus Public Building bill are anything but bright.

"It takes nearly all the revenue of the government for the Philippines," said Mr. Richardson, "and if the Republicans make a further reduction in the war revenue taxes, as it is said they intend to do, and authorize the canal and pass a River and Harbor bill, it will be interesting to know from what source the money will come. Our army now costs over one hundred million dollars annually, and it is claimed that we are on a peace footing. Now, what would that cost be if we were on a war footing?"

LAYING A CORNER STONE AT SOUTHPORT

Wilmington, N. C., Nov. 28.—Special. One thousand people attended the exercises upon the occasion of the laying of the corner stone of the new building for Atlantic Lodge of Odd Fellows at Southport today. The ceremonies were most imposing and impressive. An elaborate program was splendidly carried out. Wilmington was well represented, there being nearly two hundred present from here. An oration was delivered by Rev. S. Mendelsohn, of this