

IT'LL ALL BE OVER IN NOVEMBER

(Continued from page two.)

The complainants have not attacked the lease. This is one of the points prayed for.

Now we have a right to ask who this Howland Improvement Company is. There are some ear marks that are significant.

First this lease runs for 91 years and 10 months, longer than the life of the corporation. But there is another reason. The lease of the North Carolina Railroad to the Southern Railway was made exactly the same time, 91 years and 10 months. Now I want it understood that I myself would regard it as the best possible disposition of the property. I have never been employed by the Southern, never had a free pass from it, but Col. Andrews has done so for any other man for the development of the state in the last fifty years of the road is leased to the Southern Railway then all right, we should not say that the Southern is a responsible party for what information we have about the Howland Company? Any man who speculates can get \$105,000 to deposit as security when the lease expires the right to assign the lease to another. Tell us who this Howland Company is.

The charter of the railroad allows the stockholders to lease or dispose of their property but the charter does not permit the lending of money or carrying on speculation. Hence, the charter gives no right to lease the Atlantic coast, partially paid for, and we ask your honor to appoint commissioners to sell that hotel property and place the proceeds in a trust fund for the benefit of the stockholders.

Mr. Argo mentioned numerous other things which his clients claimed as grounds for the refusal of this motion. Mr. Argo stated that he had been of counsel for Mr. Howland and he wanted to say that Mr. Howland assured him that he was practically the sole owner of the stock.

Mr. Argo continued: "I would not tell me a man worth \$100,000 would put his money in a little little road for fun when two big trunk lines could crush the life out of it in two days if they so desired."

Mr. Argo then pointed out that this road remained in private hands until these two companies leveled their axes, probed the diseased property, demanded a remedy and then people began falling over each other to carry out the lease. After this bill was filed and before measures taken by these two men the lease of the road was broad and stock has increased from \$10 to \$35 a share. Nothing is meant in any way reflect upon Chas. B. Brock. The governor of North Carolina never realized the true condition and Capt. McBee had that complaint. In the light of these facts the satisfaction of the complainants is that they should be allowed a reasonable indemnity.

Mr. Fleming
Mr. Woodville Fleming for J. P. Cuyler of New York addressed the court and expounded the course his client pursued and the beneficial result he consummated for the state. He re-asserted in violation of Judge Purnell's order in that it should have been submitted to the court for approval.

Cuyler was simply contending to protect the interests of the stockholders. He contended that the lease was in violation of the state and in this he had succeeded. Mr. Fleming read Cuyler's answer to the notice of this motion to dismiss. The answer says that he had no notice of the stockholders meeting at New Bern, September 1st, and did not authorize the voting of his 37 shares for the lease. In conclusion the answer said that the lease appearing advantageous and approved by the court and Cuyler being allowed a reasonable compensation for his expenses, including attorney's fees, he would agree to a dismissal of the suit.

Mr. Fleming argued that the lease should have been submitted to the court before it was consummated and any other course was a violation of Judge Purnell's order and Chief Justice Fuller's precedents.

Mr. C. M. Busbee
Mr. Chas. M. Busbee, of counsel for the railroad, argued that the only purpose of the complainant was to secure a lease of the railroad, this was the remedy for the alleged deplorable condition of this property. This remedy has now been granted. In discussing the ultra vires acts Mr. Busbee showed that the company had been fully protected in the disposition under the lease.

Prior to the execution of the lease to Howland full conference was had with the counsel for Cuyler, Col. Argo, and the counsel on the other side. Mr. Pou, and in this conference Mr. Argo said go ahead and make the lease and we will not object. Besides, at this conference a letter was produced from Mr. Fleming of Cuyler's counsel advising the advisability of accepting this lease.

In discussing the validity of the lease Mr. Busbee said emphatically that Judge Purnell had acted perfectly openly and consistently in issuing his nunc pro tunc order, which was exactly similar to the Honors' previous oral statement from the bench. The milk in the cocoanut, said Mr. Busbee, was the effort of the complainant Cuyler to secure compensation for following the litigation. At the proper time the defendant would be heard on such a proposition, for the contention that Cuyler's suit brought about a lease when Governor Aycock had been making an advantageous bid for more than a year, is simply a perversion of the facts.

Replying to Mr. Fleming, Mr. Busbee declared in some pleasant, declaring that Mr. Cuyler should not hold the state responsible for criticism of the

complainants in the public press.

Judge Osborne
Judge F. I. Osborne of Charlotte, of counsel for complainants, declared that he would discuss the matter purely from a legal standpoint. For his part he believed this was a good lease. The historic facts are that Judge Purnell appointed a receiver and then came the lease. Judge Purnell's entire course in this matter met his approbation as a lawyer.

He claimed that this court now had no jurisdiction in this whole matter, it had gone up to a higher court, the gentlemen on the other side took it there. While this is a good lease still there may be a better lease and when we go before the higher court we want to be heard on that matter. All the complainants want is the best possible lease and when we go before the court in Richmond, which has jurisdiction, we will present a better lease for the court's consideration.

Considering the approval of the Howland lease the next question will be that of costs, said Judge Osborne. He argued this point claiming that the complainants stood in the position of creditors who were entitled to their expenses and attorney's fees. Then as to amount of costs the statute allows 5 per cent. on large amounts. Now the stock has increased in value to \$75 on the \$100, has it not?

"No, \$65, to be exact," said Mr. Pou. "Well, don't you think the lease has benefited the stockholders any?" asked Judge Womack.

"I think the lease a good one," replied Mr. Pou, "but while I think Judge Womack as attorney for Mrs. Tucker and Judge Purnell through his nunc pro tunc order may claim some credit for the lease it is the height of presumption for Cuyler and his attorneys to claim the credit."

Judge Osborne argued that Cuyler and Finch really set the machinery in motion which has brought about this lease of the road. Now that has increased the value of stock \$30 per share on the 15,000 shares and 5 per cent. of that would be \$37,500.

Mr. Pou declared that the most astounding proposition he ever heard of in a court house. "There never was such a case before in the history of the world," declared Judge Osborne. He then reiterated that they would not consent to the withdrawal of the appeal because behind their client stood a better bidder than Howland and this would be presented to the higher court.

In conclusion, he declared that if he had spoken too strongly or showed too much emotion he wanted the court to understand that he felt deeply, for a friend and companion of his boyhood stood under criminal indictment because he had sought justice for himself and others in this honorable court.

Ex-Gov. Jarvis' Remarks
Court reconvened at three o'clock, and Governor Jarvis first addressed Judge Purnell. He said he would assume that all parties had done what they thought was strictly in the bounds of law and propriety. But he must decline to concur with the idea that the present advantageous disposition of the property of the A. & N. C. Railroad was due solely to the present litigation.

Governor Jarvis said that he probably knew more of the history and affairs of the A. & N. C. Railroad than any man present, and then he declared: "I do not believe and never have believed that in a republic like ours states and government should own and run railroads." So convinced was he of that fact that it was matter of history that during the six years of his own administration he had pulled the state out of her connection with railroads and internal improvements. The only railroad left under the control of the state when he went out of office was this one, and that was left not because he had not tried to get rid of it, but because those who had then leased it were unable to fulfill their contract.

This he said to explain why he was so positive in his advice to the governor in regard to the matter of lease. Early in December Governor Aycock had sent for him and shown him the Mills-Finlayson proposition. He strongly advised the governor not to accept it, as there was not sufficient guarantee back of it, and it was altogether unfit to be submitted to the stockholders of the road. Then in ringing tones Governor Jarvis declared that he it was who had urged the governor to direct the state's proxy to stay away from that December meeting, and that was the only thing the governor ought to have done under those conditions. It was right.

Then in February, upon coming to Raleigh to attend supreme court, he had been consulted by Capt. McBee, who showed him his proposition to lease the road, and asked him if he was in a position to act as attorney for him in the matter. Governor Jarvis had responded that it would be impossible, as he wished to keep himself absolutely free to advise with the governor, since he had honored him with his confidence in the matter.

However, he had examined Capt. McBee's proposition, and had told him that with some changes he believed it would be worthy of consideration. For one thing he did not think there was sufficient security put up. The next thing he heard was the application for a receiver with no apparent reason.

As a stockholder of the road, Governor Jarvis stated that he believed that the present lease was one that would be most advantageous to the stockholders and to that section of the state. He was glad, said he, that he had been spared to go to that stockholders' meeting and cast his vote to get that road out of the hands of the state. As to Mr. Howland, Governor Jarvis spoke of him without undue praise, but simply stated who and what he was.

Judge Osborne had talked in vague and indefinite terms about some other proposition to be submitted in Richmond before the circuit court. He had waited, but had not heard it, for Judge Osborne to explain what possible business the circuit court of the United

States had with the leasing of the A. & N. C. road. That was along the line of all those vague rumors printed in the newspapers of bids from New York and other places, but he stood there in a position to announce emphatically that the Howland bid was the only proposition that ought to have received any consideration at the hands of the governor.

In the last analysis, what these gentlemen said amounted to this: This court has no jurisdiction to make any order dismissing this case, but if it will make an order giving us \$27,000, it will be all right, the suit may be dismissed.

Governor Jarvis closed with an urgent plea for the ending of this litigation. What this road needed was "rest and revenue." It had needed this all along, and now was the chance to get it.

Mr. Fleming said that Governor Jarvis had advanced the best argument that could be made for the complainants, for he had shown that no bid submitted before the investigation brought about by the litigation was worthy of consideration. With President Bryan's report, no one would offer enough.

Judge Womack
Judge Womack, in his argument on the legal phase of the question, said that the complainants were in the position of opposing the very thing they were supposed to want. They had asked for the appointment of a receiver on the ground that a lease could not be obtained. They got their order appointing the receiver, and the defendants appealed. Now the road has been leased one thing the complainants wanted, and the defendants have offered to withdraw their appeal, which it would seem reasonable to suppose was another thing the complainants would want. But they actually say no to that proposition and stand in the way of ending the litigation. What is it they want? Cuyler's stock voted for this lease. Did he not ratify it?

Then, turning to Mr. Fleming, Judge Womack asked him to state whether or not Cuyler ratified the action of his proxy in voting for the lease. He pressed the question, and Mr. Fleming replied that Mr. Cuyler knew nothing of it when it was done. But did he ratify it now? persisted Judge Womack and Mr. Busbee.

Mr. Fleming said his client was not responsible for what had been done. "He is not responsible, and yet wants a large allowance for bringing about the lease—is that your position?" asked Judge Womack.

Judge Womack recalled his motion on May 28th for a stay of sixty days so that the property might be leased. Who had opposed his motion? These complainants, who now took all the credit to themselves for this lease. No, they did not want the lease then; they wanted a receiver appointed, and Judge Womack had stood there and begged the court not to appoint a receiver, but to grant a stay of sixty days, in order that the lease might be made.

Colonel Argo asked Judge Womack if the nunc pro tunc order was not just the same as the original order that was lost. Judge Womack said it was, but it was not the order he wanted. "But you excepted to it," said Colonel Argo. "I did not," said Judge Womack. "Your co-defendants did," replied Colonel Argo.

"Their defense has never been our defense," rejoined Judge Womack. He went on to say then that he had been admitted in the case merely as an actor, representing the largest private stockholder, for the purpose of making a motion to expedite the lease and get the road out of litigation.

Colonel Argo moved that the court investigate the reliability and responsibility of the lessee, and Mr. Pou argued vigorously against this, declaring it to be entirely unnecessary. Colonel Argo insisted that his clients did not oppose the lease, but merely wanted to know who the lessee was. Then for a minute or two Colonel Argo, Mr. Pou, Mr. Fleming, Mr. Busbee, and even the venerable and dignified Governor Jarvis had it back and forth on all sorts of "ultra vires" subjects that had come up in the course of the discussion, which had threatened to go back over the whole evidence as brought out in the "conspiracy" trial.

Judge Purnell's Opinion
But Judge Purnell finally stopped it all by saying: "I don't think, gentlemen, the responsibility for this lease rests with the court." Then every lawyer listened with all his ears while the judge delivered his oral opinion, which was in effect as follows: "The appeal in this case could only be taken from an order appointing a receiver, and the case for other purposes remains in this court. The bill is pending here, and the court could proceed under the statute to grant any order it might see proper. The order being appealed from, this case is in the circuit court of appeals, and a proposition has been tendered by appellant to withdraw the appeal under rule 20 of the circuit court of appeals. The appellant proposes to withdraw the appeal when the court meets.

The court repeats, as stated on May 28th, orally, and afterwards incorporated in an order, that this court has no power to make a lease. It can forbid one, but can not make one. The court said in reply to Judge Womack, who asked for a writ of supersedeas for sixty days, that the court had no power to prevent the directors from meeting and making a lease. That was an oral instruction construing that order. The court continued from fifth page.

It meant it then, and did not hesitate to put it in shape of an order afterwards. The making of a lease means more than a mere paper. It meant that the directors and stockholders of the A. & N. C. road might do whatever was necessary to be done to complete the lease. Therefore the court, understanding what had been done and the intent of it, if the question of contempt had been brought before it, would rule that the parties were not in contempt in delivering the property. This court having no authority to make a lease, I think the power to investigate the lease as presented to the court is also lacking. It must take the lease as having been made in good faith. It must take

it that the governor and directors have thoroughly investigated the matter and this court has nothing to do with the responsibility of the lease. The court has heard no objection to the lease. In fact some of the counsel expressly endorse it and consider the same a good lease, and this court will consider it as the basis of a motion for dismissal made by Mrs. Florence P. Tucker and the other defendants.

The appointment of a receiver is largely a matter within the discretion of the court, and that being so the court controls at all times the receiver.

In this phase of the case, the injunction not being appealed from, the court will modify the injunction and enter an order to that effect in accordance with the revisions as embodied in the nunc pro tunc order of July 27th and continue the injunction as to the acts ultra vires, if the complainants so desire.

The order appointing receivers will be vacated on the appeal being withdrawn, of course the order to be effective on the withdrawal of the appeal. The bill will be retained, with permission to the complainants to amend same as they may see fit in this respect, the defendant to pay costs up to the present time.

As to allowances, that matter is not in a condition at the present time for the court to exercise its discretion, and the court therefore declines to consider this question, but reserves its decision until the litigation shall be terminated or be in such a condition as to present it to the discretion of the court, and a formal order embodying these rulings will be entered.

MISSION AND EVANGELIST CONFERENCE

A series of special mission and evangelistic services have been arranged to occur in the Tabernacle Baptist church, beginning tomorrow, September 21st.

The pastor, Rev. J. C. Masee, will preach this evening, tomorrow and Friday evenings. Services commence at 7:45 o'clock.

On next Sunday morning and evening Rev. A. E. Brown of Asheville, assistant secretary of the home mission board, will preach.

On Monday afternoon at 4 o'clock an address will be delivered by Pastor Masee. At 7:45 p. m. Rev. C. W. Duke of Elizabeth City will preach. On Tuesday afternoon at 4 o'clock Rev. Dr. Bumpas, pastor of Edenton Street Methodist church, will make the address. At night Rev. Mr. Duke will preach.

On Wednesday afternoon at 4 o'clock Mr. T. Nell Johnson of this city will speak and Mr. Duke will preach at 7:45 p. m.

Thursday at 4 p. m. Rev. C. J. Thompson, pastor First Baptist church of Durham will speak. At 7:45 p. m. the sermon will be by Mr. Duke.

On Friday at 4 p. m. address by Dr. R. T. Vann. Sermon at night by Mr. Duke.

On Sunday morning at 11 o'clock Rev. Dr. R. J. Willingham, secretary of the foreign mission board of the Southern Baptist Convention, will preach. The pastor, Rev. J. C. Masee, will preside. A cordial invitation is extended our people to attend these services.

PERSONALS

Mr. V. M. Dorsett is in the city from Siler City. Mr. T. J. Cheek was here from Greensboro. Mr. W. W. Roberts spent yesterday in Henderson.

Mr. T. W. Bickett was here last night from Lenoir. Mr. H. H. Harris, Jr., is in the city from Franklin. Mr. E. H. Gibson was in the city from Kernersville.

Mr. Stephen W. Isler was a Raleigh visitor from Kinston yesterday. Mr. Jacob Battle was a visitor in the city yesterday from Rocky Mount. Mr. R. N. Hackett of Wilkesboro was a guest at the Yarrowburgh yesterday.

Mr. W. M. Brown of Winston-Salem spent yesterday in the city on business. Mr. Baylus Cade was here yesterday from Murphy on professional business. Mr. W. C. Munroe, who was here the last two days as counsel for the A. & N. C. Railroad in the Cuyler suit heard-

Supt. Joyner Returns

Hon. J. Y. Joyner, state superintendent of public instruction returned yesterday from Ayden, Pitt county, where he participated in the ceremonies and festivities attendant on the opening of the graded school of that place. The speakers were Supt. Joyner and Congressman Small. Mr. Joyner says Ayden is in one of the very best sections of the state, has about 800 inhabitants and has established a splendid local tax district, the rate being thirty and ninety cents. The enrollment last year was 205 and the average attendance 165. Pitt county Mr. Joyner says, is taking a very high position in eastern Carolina educational matters, having quite a number of local tax districts and an ever increasing number of good well designed school houses.

New Vocal Instructor

Announcement is made that Miss E. Louise Hopkins of Providence, R. I., has been engaged as teacher of voice culture and singing at the Baptist University for women. Miss Hopkins is a certificate pupil of Sig. Delle Sedia of Paris, a pupil of Randegger, of the Royal Academy of London, and of Shakespeare, of London. She is especially interested in voice placing and voice development, and to this work gave especial attention during three years of study in Paris, going twice each week to teach under the eye and direction of the great master of vocal art, Sig. Delle Sedia.

Mr. John L. Currie of Carthage, for several terms sheriff of Moore county and one term a member of the House from that county, spent yesterday in the city with his two little boys, who were paying their first visit to the capital of the state.

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It is the function of the kidneys to filter and purify the blood which is constantly passing through them.

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You can easily determine if your kidneys are out of order by setting aside for 24 hours a bottle of the urine passed upon arising. If upon examination it is cloudy or milky or has a brick-dust sediment or small particles float about in it, your kidneys are diseased and **Foley's Kidney Cure** should be taken at once.

Foley's Kidney Cure is pleasant to take and acts directly upon the parts affected and you begin to feel better at once.

It corrects slight disorders in a few days and it has cured many obstinate cases after other treatment had failed.

Doctors Said He Would Not Live.

Peter Frey, of Woodruff, Pa., writes: "After doctoring for two years with the best physicians in Waynesburg, and still getting worse, the doctors advised me if I had any business to attend to I had better attend to it at once, as I could not possibly live another month, as there was no cure for me. **Foley's Kidney Cure** was recommended to me by a friend, and I immediately sent my son to the store for it and after taking three bottles I began to get better and continued to improve until I was entirely well."

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