

# THE MANDAMUS IS ALLOWED

## Judge Justice Decided at Once after Hearing Argument TO SUPREME COURT

### A Man who Fails to Pay Poll-Tax Is Not Taken From the List of Registered Voters—Non-Payment of Poll-Tax Does Not Prevent a Man Being a Registered Voter

Judge M. H. Justice yesterday decided to issue the mandamus ordering the board of aldermen and the city administration of Raleigh to call an election on the question of dispensary or saloons, on the ground that the petitioners for the election constitute more than one-third of the registered voters of the city, registered at the last city election.

The judge's decision was reached immediately after hearing the argument of counsel, Mr. R. H. Battle for the board of aldermen, and Mr. W. B. Jones and Col. T. M. Argo for the petitioners. Indeed, it was clear that Judge Justice's mind was made up long before the argument was concluded. He stated from the bench, however, that he would have liked to rule the other way and hoped the supreme court would overrule him, but with the law as it was he was obliged to grant the mandamus.

Mr. Battle stated that the question would be appealed to the supreme court, and that it would probably be argued there next week. Judge Justice's position was that when the law said registered voters it meant registered voters and not qualified voters, that a man who failed to pay his poll-tax was not taken from the registration books legally, as he was when he moved out of the precinct or died or was found not to be able to read and write; that this was the marked difference between a registered voter and a qualified voter. In other words, the non-payment of poll-tax does not prevent a man from being a registered voter in the meaning of our constitution.

The entire hearing of the case consumed about two hours, from 12 until 2 o'clock. The formal judgment was not drawn up yesterday, but will be today. It will set forth that the only question at issue is the one regarding the payment of poll-tax, both sides having agreed upon this.

First, Mr. W. B. Jones read the complaint, and City Attorney W. B. Spow read the answer of the defendants. After hearing the complaint and answer the judge asked if the only question was not the one of payment of poll-tax. Both sides agreed that it was. The judge said it looked like the authority was the constitutional amendment. "Yes," said Colonel Argo, "and the statute passed in accordance with it."

Mr. Spow said that in view of certain facts appearing in the complaint and answer, he would leave the argument for the city and board of aldermen to Mr. Battle. "I expect to make Brother Spow's speech, in the main," said Colonel Argo.

around of this petition. It is provided that these elections shall not be held oftener than once in two years. That shows how careful the framers of the Wats law were that the people should not be frequently agitated by an election. Then shall we let them be agitated by the action of persons who are not even voters? Section 9 of the Wats law showed that the terms "voter," "registered voter" or "qualified voter" were synonymous so far as that law was concerned. The charter of the city of Raleigh allows persons to vote only when they are registered voters and "otherwise legally qualified."

When Mr. Battle cited a case in the 17th N. C. Reports, Colonel Argo asked what date that was. It was 1875. "That was before the date of this constitution," said Colonel Argo. "The changes have only made the old law stronger," replied Mr. Battle. "All right; we will see," rejoined Colonel Argo.

Then Mr. Battle quoted from Chief Justice Clark in the 18th N. C. Report, Wrenn against Ray, p. 734, where Judge Clark makes synonymous the terms "qualified voters" and "voters." In this connection Mr. Battle also cited Young against Henderson, Duke against Brown, and Riggsbee's case. After Mr. Battle concluded his argument, Judge Justice began to ask him questions. "Suppose," he asked, "one of these men who failed to pay his poll-tax should be challenged before the registrar, what would be the result?"

"He could not vote," said Mr. Battle. "Do we erase his name from the registration book?" asked the judge. "No," said Mr. Battle. "Suppose his name is on the permanent roll," continued the judge, "and he fails to pay poll-tax and his name is not taken off the books, the next year if he pays his tax he can vote, can't he?" "But if he can't read and write, or if he moves his residence out of the precinct, or if he dies his name is erased. Is not that the test of the registered voter, and is not the test of the qualified voter the paying of poll-tax? The sheriff's receipt for poll-tax will enable any registered voter to vote, without action by anyone else."

Mr. Battle insisted that a man who had not paid his poll-tax was not on the list for that year as a voter. "I don't know about that," said the judge. "However, I hope you are right."

T. M. Argo. Colonel Argo said that he had no doubt that a great many citizens of Raleigh who were of the opposite opinion hoped Mr. Battle was right. His honor, said Colonel Argo, had asked the material questions in the case, showing that there was a difference between registered voters and qualified voters. There was a distinct difference. In several recent cases, when special elections had been called, it was expressly stated that a majority of the qualified voters would be necessary to carry the election.

Colonel Argo read from the constitution showing the difference between a registered voter and a qualified voter. "By the way," said he, "notice that this charter you rely on has nullified the constitution. It is equivalent with the high-handed movement they are trying to carry through now."

According to the constitution a man may register and then not be able to vote until he has paid his poll-tax. He is a registered voter as soon as he is allowed to put his name on the book by the registrar. Whether he may vote or not at the next election is another question entirely. Said Colonel Argo to Mr. Battle: "You call voter a participial adjective. It's no such thing. It's a noun. You've forgotten your grammar. I know you used to be a good grammarian, but you've forgotten it."

As to the question asked by his honor, a man might fail to pay poll-tax a dozen ways, and his name stays on the books. That was the answer to his honor's question. Any year that a registered voter pays his poll-tax he is entitled to vote. The colonel read from the constitution on the subject of the permanent roll of registered voters, showing that such were always voters, provided they paid their poll-tax. But they were always registered voters. Mr. Battle insisted they were not voters unless they voted. "A man don't cease to be a man," declared Colonel Argo, "because he ain't get all he claims at some particular time. 'A man's a man for a' that.' Why a man might be out of the state and be ever so wealthy and fail to pay his poll-tax. According to that he would be disfranchised. There never has been an instance of this. There never has been any law authorizing it."

# STATE BANKING INTERESTS GROW

## Increase of \$6,057,581 In Resources During the Year

### SUMMARY JUST ISSUED

#### Corporation Commission Shows Condition of State, Private and Savings Banks at the Close of Business Aug. 25—The Grand Total of Resources \$35,900,024

The North Carolina corporation commission issued a summary of the statements of the condition of state, private and savings banks at the close of business August 25, 1905, showing the aggregate of resources to be \$35,900,024.48, a gain of \$6,057,581.56 during the past year. That is the aggregate of the resources a year ago when the reports were called for September 6, was \$29,842,442.92.

The statement just issued by the commission shows that the aggregate of the deposits subject to check is \$20,566,999; time certificates of deposit \$3,083,717, and the demand certificates of deposit \$1,301,650. Here is the summary in full as issued by the commission:

RESOURCES.	
Loans and discounts other than demand loans (see schedule)	\$23,597,695.31
Overdrafts	244,138.58
United State bonds on hand (par value)	\$20.00
North Carolina state bonds 6 per cent.	34,664.59
All other stocks, bonds and mortgages	1,051,912.47
Premium on bonds	3,361.19
Banking houses, furniture and fixtures	\$54,128.82
All other real estate owned.	183,825.55
Demand loans	\$ 999,772.24
Due from banks and bankers	5,582,803.76
Cash items (see schedule)	286,327.15
Gold coin	342,093.06
Silver coin, including all minor coin currency	291,533.53
National bank notes and other U. S. notes	1,144,267.00
	\$ 8,646,847.04
Invested trust assets	\$ 1,259,285.10
Miscellaneous	18,350.43
Total	\$35,900,024.48

LIABILITIES.	
Capital stock paid in	\$ 5,395,556.75
Surplus fund	957,179.26
Undivided profits, less current expenses and taxes paid	1,022,552.37
Dividends unpaid	7,056.28
Notes and bills rediscounted	484,042.01
Bills payable	667,172.87
Time certificates of deposits	3,083,717.27
Deposits subject to check	\$20,566,999.60
Demand certificates of deposits	1,301,650.77
Due to banks and bankers	674,442.48
Cashier's checks outstanding	138,859.28
Certified checks	36,816.87
Accrued interest due depositors	45,454.01
Deposits in trust	1,480,805.69
Miscellaneous	1,359.97
Total	\$35,900,024.48

#### Epitaphs

Bangor, Me., Sept. 4.—Among the ancient burying grounds of Maine the old First Parish cemetery of York possesses a quaint individuality. Since 1643 it has given a place of rest to the dead, who slumber within sound of Atlantic. Many of its crumbling tombstones are nearly covered with moss. For the epitaph collector their slabs of slate are fertile fields.

The following lines recite good qualities of one highly esteemed by his townsmen, who could not, however, free their tribute from glooms theology: In memory of Edward Emerson, Jr., who departed on Oct. 14, A. D., 1905. Capacious was his mind, Benevolent his heart, Spotless his character— Generous, humane and just. But alas! how frail is man! In an obscure corner some long dead cynic slumbers, rebuking caustically the common vice of curiosity. One who clears away the brambles is rewarded with two lines:

I was somebody, Who is no business of yours. This roughly traced epitaph appears on another grave:— Mercy Walnwright, 1715-1760. She was good to all. Of the opposite character is the following inscription: Here lies the body of Jonathan Drew. He cheated all he ever knew; His Maker he'd have cheated too. But that, his God, he never knew. Within a stately tomb rest the remains of Judge David Sewell, a jurist well known in Massachusetts courts; Upon its wall is a record of the fact

that in him "a devoted benevolence was happily directed by an enlightened intellect. Conscientious in duty, he was ever faithful in its discharge. His house was the abode of hospitality and friendship."

For unusual expressions of grief the First Parish cemetery at neighboring Kittery is not surpassed. It lies on the rocky promontory of Kittery Point, which reaches out into the Piscataqua like a great hand. It was old when Peppereil's barges rode the river.

In an obscure corner is the rimed effort of some poetically inclined butcher. It chronicles the demise of Margaret Hills: I lost my life in the raging seas, A sovereign God may do as he please, The Kittery folk they did appear, And my remains they buried here. Upon a big gray boulder is a Hibernal memorandum: Bridget and I had two children dear, One lies in Ireland and the other here. Here is the epitaph of one who may have been an early Populist: Here lies the body of Walter Gordon, Mouth amazin' and teeth accordin'; Stranger, step lightly o'er this wonder; If he opens his mouth you're gone by thunder.

Take the burn out; heals the wound; cures the pain. Dr. Thomas' Electric Oil, the household remedy.

# NEW BANK EXAMINER

## J. W. Aycock is Succeeded by F. J. Haywood, Jr

### Aycock's Resignation is to Become Secretary-Treasurer of Goldsboro Furniture Co—Examiners Office Worth About \$2,300 and Expenses.

The announcement is made by the corporation commission that Mr. J. W. Aycock has tendered his resignation as state bank examiner to take effect immediately, and that Mr. F. J. Haywood, Jr., has been appointed in his stead, to enter at once on the duties of the office.

Mr. Aycock resigns to become secretary and treasurer of the Goldsboro Furniture Company. He was appointed bank examiner last April to succeed Mr. J. O. Ellington, who retired to become an officer in the new bank at Fayetteville. At the time of his appointment Mr. Aycock was assistant cashier of the Bank of Wayne. Members of the commission state that he has made an excellent official and that they regret to lose him from the service. However, the inducements offered by the furniture people were too great to turn down. The company is one of the most extensive furniture manufacturers in this section.

Mr. Haywood, who succeeds Mr. Aycock as examiner, is a young man of exceptional ability and special equipment for the duties of the office he assumes. He is a son of Dr. F. J. Haywood of this city. He is a graduate of the University of North Carolina and has had quite a deal of experience in banking. In Raleigh, in Wilmington and for the past several years at Charlotte where he has been serving with marked success as cashier of the Southern Loan and Savings Bank. His numerous friends here will gladly welcome him back to Raleigh, which will be his headquarters.

#### The Girl at a Base Ball Game

(Yonkers Statesman.)  
Patience—"So you've been to the baseball game?"  
Patrice—"Yes, dear."  
"Was it interesting?"  
"Oh, very."  
"How did it come out?"  
"Why one side got one run and the other got two."  
"Which won?"  
"The one which got two runs."  
"Yes, I know; but did the home team win or the visitors?"  
"Oh, I didn't ascertain that."  
When Eve one morn, with half open eyes,  
Lay drooping while the bees made honey—  
(Her bed was flowers in paradise),  
The thought came she was out of money.

Her month's allowance fled away;  
Her egg and butter money wasted;  
Tomorrow will be bargain day;  
Her only gown the leaves she had basted.

She knew that Adam would not give  
A sou markee e'en should she ask it;  
The butter cow was going dry,  
There were no eggs within her basket.

"If I amuse, he'll not refuse—  
No! Too long we have been married;  
To kisses he is so well used  
Their very sweetness makes him wearied.

"Perhaps 'tis true that man is quite  
As fond of flattery as woman;  
I'll try the military flight;  
If he'll not bite he is no true man."  
So, rising from her fragrant bed,  
She cleaved the pool for bath diurnal;

Then sought her lord and sweetly said:  
"I'd like a little money, COLONEL!"  
A proud look came in Adam's face,  
He strutted, marched and wheeled before her,  
She hid her smiles in his embrace;  
But the roll of her adorer.

T. N.

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North Carolina—Wake County. In the Superior Court—Before the Clerk.

NOTICE.

Durham and Southern Railway Company vs. Caswell Pollard, Thomas Surles and wife, Helen, Fannie Penney and her husband, William Penney, Estus Pendergraft (minor), Lydia Pendergraft (minor), Peggie Surles and her husband, William Surles, Mary Maynard, Jackson Upchurch, Quillie Maynard and her husband, Alley Maynard, Dillie, John Upchurch and wife, Della, Margaret Pendergraft and her husband, Samuel Pendergraft, Jake Maynard, Jane Marcom and her husband, Lewis Marcom, Winnie Maynard, Brink Maynard and his wife, Laura, Annie Maynard, Tabble Nutt and her husband, John Nutt, heirs of Winnie Surles, deceased, (name and residence unknown), heirs of Thomas Surles, deceased (names and residence unknown), James Maynard, Z. M. Maynard and wife, Laura, Joseph Maynard and wife, Julia, Ashworth Ford, Louisa Maynard, Adolphus Ford, Martha Bienne, and her husband, Joseph Bienne, Penney Castlebury and her husband, Alonzo Castlebury, heirs of William Maynard, deceased, (names and residence unknown), heirs of Betsy and Mansford Ford, deceased, (names and residence unknown), and the heirs of Annie and Kit Ford, deceased, (names and residence unknown).

The heirs of Thomas Surles, deceased, heirs of William Maynard, deceased, heirs of Betsy and Mansford Ford, deceased, and the heirs of Annie and Kit Ford, deceased, (names and residence unknown), you and each of you will take notice, and notice is hereby given to each of you, that a special proceeding, entitled as above, has been commenced in the Superior Court of Wake county, North Carolina, to condemn, for the use of the plaintiff as a right of way, on which to construct and operate a railroad, a strip of land 100 feet wide and 4.365 feet long, containing 10.04 acres; as now actually surveyed, located and staked off by Geo. E. Lemmon, chief engineer, through a tract of land formerly owned by Berry Surles (now deceased), situate in White Oak township, Wake county, said estate, bounded on the north by the land of Augustine Herndon; on the east by the land of J. W. Edwards; on the south by the land of Mrs. Nancy Morgan (nee Sears), and on the west by the land of A. S. Sears. Said tract of land containing 280 acres more or less.

And said defendants will further take notice that they are required to appear at the office of the Superior Court for Wake county, North Carolina, on Saturday, the 7th day of October, A. D. 1905, at the court house in said county, and answer or demur to the petition filed in said proceedings or the relief demanded in said petition.

W. M. RUSS,  
Clerk Superior Court.  
H. E. NORRIS,  
Attorney for Plaintiff.

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