THE NALL CASE IS CONTINUED

Defendants Said Didn't Know State's Purpose

ARGUMENT WAS BRIEF

Continuance Granted on Ground that Defendants Had no Time to Summon Witnesses Needed—True Bill Returned Yesterday Morning. Case Set for January Term

The grand jury yesterday morning returned a true bill against J. C. King, L. R. High, Jack Peele and W. F. Durham, state hospital attendants, for the murder of Thomas H. Nall, the patient from Chatham county who met his death in an attempt to escape from the asylum.

Yesterday afternoon the case was continued on motion of the defendants, granted by Judge Justice after brief argument, on the ground that they did not know until this morning whether or not a bill for murder would be presented by the solicitor, and had not summoned expert witnesses considered material to determine the question of cause of death.

The case is now set for the second Monday of the January term of court, and the defendants are under bond in the same amount agreed upon at the habeas corpus proceedings before Judge Hoke, $1,000 each.

Foreman D. H. Smith of the grand jury yesterday morning brought in for the jury a true bill for murder against J. C. King, L. R. High, Jack Peele and W. F. Durham, the four state hospital attendants charged with the killing of Thomas H. Nall, the patient who lost his life in the attempt to escape on August 24th last.

The jurors for the state present that the four attendants "feloniously, wilfully and of their malice aforethought did kill and murder Thomas H. Nall."

The witnesses examined before the grand jury were J. T. Rowland, J. R. Chamberlain, Lee Alston, E. W. Gaither, Dr. T. M. Jordan, Dr. J. N. Taylor, J. P. Massey and F. P. Brown.

The case had been set for trial yesterday, and when it was called immediately after court had reconvened at 3 o'clock from the dinner recess the four defendants and all the counsel were at the bar, Maj. H. A. London and Mr. R. H. Hayes of Pittsboro, assisting Solicitor Armistead Jones, Judge T. B. Womack representing the executive department of the state, and for the defense Maj. S. G. Ryan, Col. J. C. L. Harris and Mr. Charles U. Harris, ex-Governor C. B. Aycock representing King, High and Peele, and Col. T. M. Argo and Mr. Elmer M. Shaffer and Mr. James H. Pou and Mr. Thomas S. Fuller appearing for Durham.

There was a large crowd in the court room, persons standing several deep around the railing of the bar, besides all the seats being filled.

First of all, Solicitor Jones stated that he would not try the defendants for murder in the first degree, but that he would prosecute and insist upon a verdict for murder in the second degree or manslaughter, or any other less offense. He then announced that the state was ready.

Colonel Argo, for the defense, then addressed the court, saying that the defendants were not ready for trial at this term of court. There had been, he went on to say, no preliminary investigation except the ex-parte one before the coroner's jury, as a result of which the defendants had been committed to jail. There had been another ex-parte investigation before the board of directors of the state hospital, at which they arrived at a different conclusion. So, argued Colonel Argo, the matter was in a state of great uncertainty as to what kind of a charge would be made, if indeed any at all.

The defendants had been in the dark as to the purpose of the state until the bill had been returned by the grand jury that very morning. They did not know what witnesses would be necessary. They had not been informed, possibly because the officers of the state were not themselves able to determine, what course they would pursue. As it was now, the defendants would need the same character and number of witnesses as if the bill were for murder in the first degree. They would have to have expert witnesses from different parts of the state, and also witnesses from Chatham county, neighbors of Nall, and other witnesses from the institution itself would be necessary. It was impossible to get them here at this term of court.

For these reasons the defendants asked his honor to continue the case until the January term of court. They could, he thought, easily give bond.

Judge Womack, replying for the state, said that the state did not desire to rush any one charged with a serious crime into trial without due time for preparation. But he did not consider that the cases suggested came within the rules prescribed for continuance of cases. Consequently the matter was directed to his honor's discretion.

Judge Womack then went on to recall the facts in the case. The homicide had occurred on the 24th of August. Some two weeks later the defendants had been committed to jail upon the strength of the verdict of the coroner's jury that Nall had come to his death by blows inflicted by the defendants. On September 16th they had been admitted to bail by Judge Hoke, with the consent of the solicitor. There had been no intimation whatever that they would not be tried. A jury of their countrymen had found probable cause for their conviction.

Moreover, the defendants had had an unusual advantage. A month ago they had the evidence upon which the state relied.

As for the investigation before the asylum directors, the directors had declined very properly to pass on the question of the innocence or guilt of these defendants. They had not, as his colleague had said, come to a different conclusion. If there was any legal ground for a continuance, of course the state expected his honor to do everything to secure a fair trial, but none of the reasons advanced appeared to come within a bow-shot of legal ground.

Colonel Argo rejoined by saying that the board of directors did not come to the affirmative conclusion that the deceased came to his death by violence, but found by the testimony of experts that he came to his death by other means than violence. "If that's not different, I don't know what a difference is," exclaimed the colonel. "We had reason to believe the state would adopt the testimony of those nine expert witnesses. All this is opinion evidence anyhow, or expert testimony. There was no eye witness save the defendants. We did not know this bill would be found. Inasmuch as homicide is charged this expert testimony is absolutely necessary and material, and we can't get it here at this term of court. Some of those witnesses testified positively that it was impossible from the conditions found after death for violence to have caused the man's death. Is that material evidence? Yet we have not summoned those witnesses."

Solicitor Jones said that in justice to himself he would say that he had been approached by Mr. Pou and also by Colonel Argo and asked what sort of a bill he would send. He had told them that he could not say, but had said frankly that he would not send a bill for murder in the first degree. He thought that one of them had asked him if he would send a bill for murder in the second degree, and he had said yes.

The solicitor said it seemed to him like any other case. They must have known a bill was going to be sent. They had had some days at least in which to subpoena witnesses. He understood that none had been summoned.

Mr. Jones went on to say that he had not read the report of the board of directors just published yesterday morning, but it seemed that the board had absolutely eliminated the question of the innocence or guilt of these defendants.

Ex-Governor Aycock next spoke for the defendants. He said he did not know that there was ever any real legal cause for continuing a case. It was always a matter in the discretion of the judge. This case presented unusual features. It was the first instance in his experience of nearly a quarter of a century in the practice of law that a prisoner had been committed to jail by a coroner without a preliminary investigation by a justice of the peace. The defendants had had no opportunity to cross-examine the state's witnesses. Up to this time they had had no opportunity to be heard and no time to examine the evidence brought out before the board of directors.

"In the meantime," continued the ex-governor, "the governor has joined hands with the judicial department of the state. Your honor understands what a thrill of horror goes through people when it is heard that an insane person has been badly treated. And some of our newspapers have been active in arousing public sentiment in this matter. It was not needed, but nevertheless those papers have published accounts that stirred the people, and they are uncorrected by the full publication of the proceedings of the second investigation. I am perfectly confident of the innocence of my clients, and yet I am afraid to go to trial now. I distrust anybody when the heart is beating fast in sympathy with a dead insane person. I am opposed to lynch law, but I am more opposed to hastening a man to a legal trial before time has been given to reason calmly and examine into the facts, for the latter is a travesty on the law itself. The governor did not act until yesterday in appointing his representative in the case. Why, then, should we be hurried?"

Judge Justice then stated that, as the defendants did not know what kind of a bill the state was going to present, and therefore had not summoned material witnesses, he would continue the case until the January term. He did not think any wrong or harm could possibly come of the continuance.

Then by agreement of counsel the case was set for the second Monday of the January term.

Knightdales Depot

Final arrangements have been made for the construction at once and for the permanent maintenance of a freight and passenger depot at Knightdale, the first railroad station out of Raleigh on the new Raleigh and Pamlico Sound Railroad. This proposed new town is abuot one and a half or two miles the other side of Neuse river. Streets and lots have been laid off on the property, and lots will be offered at private or auction sale in a few days.

Death of Miss Myrtle Wilson

Miss Myrtle, daughter of S. B. Wilson of Greenville, died at the home of her parents Tuesday morning, from the effects of typhoid fever. She was a faithful member of the Baptist church. The funeral took place Wednesday and was followed by interment in Cherry Hill cemetery.

TEXT OF THE JUDGMENT

Judge Justice's Decision in Mandamus Case

Payment of Poll Tax Not a Necessary Qualification to Enable a Petitioner to Sign Petition Asking for an Election

Judge Justice yesterday signed the judgment issuing a mandamus to compel the city of Raleigh to hold an election on the question of dispensary or saloons. The text of the judgment is as follows:

North Carolina, Wake County—In the Superior Court, before M. H. Justice, judge, holding the courts of the Sixth Judicial District, September 25, 1905.

The State ex rel. J. M. Pace, W. C. Norris and W. J. Ellington, petitioners in their own behalf and in behalf of the other petitioners, and J. M. Pace, W. C. Norris and W. J. Ellington, petitioners in their own behalf and in behalf of other petitioners Plaintiff.

against

The City of Raleigh and the Board of Aldermen of the City of Raleigh and James I. Johnson, Mayor, and Wm. Boylan, Wm. B. Grimes, W. A. Cooper, Ed Hugh Lee, Geo. M. Harden, H. W. Jackson, L. G. Rogers and J. S. Upchurch, the last eight constituting the Board of Aldermen of the City of Raleigh, Defendants.

JUDGMENT.

This cause coming on to be heard by his honor, Michael H. Justice, judge presiding in the courts of the Sixth Judicial District, in Chambers at Raleigh, on the 27th day of September, 1905, upon the pleadings and the admissions of the parties, and it being admitted by the parties, plaintiffs and defendants, that the only question to be considered in the case and arising upon the pleadings is one of law to-wit: Whether under the law, Ch. 233, Sec. 7, Laws 1903, the requirement as a qualification to vote, to-wit: That no person shall be entitled to vote unless he shall have paid his poll-tax on or before the 1st day of May of the year in which he offers to vote should be applied as a test of the competency of a petitioner to sign the petition specified in the complaint, and it being further admitted that if it should not be so applied, under the said law, the petitioners number more than one-third of the registered voters in the City of Raleigh, who were registered for the preceding municipal election.

NOW THEREFORE, after hearing the arguments of counsel for the respective parties, IT IS CONSIDERED, ORDERED AND ADJUDGED BY THE COURT, that the payment of poll-tax for the previous year on or before the 1st of May, 1905, is not a necessary qualification, under said Sec. 7, Ch. 233 of the Laws of 1903, to enable a petitioner to sign the petition specified in the complaint; it is further considered and adjudged that the petition set out in the complaint was signed by more than one-third of the registered voters of the City of Raleigh who were registered for the preceding municipal election therein, and that said signers petitioned for an election as specified in said petition, and that said petition contained more than the requisite number of petitioners under the provisions of said law of 1903.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the Board of Aldermen of the City of Raleigh forthwith assemble, and that they forthwith order an election to be held, after thirty days' notice, in the said City of Raleigh, to determine whether bar-rooms or saloons shall be established in said city under the high license tax provided by the present charter of said city, said election to be held and conducted in accordance with the rules and regulations which are now provided by law.

IT IS FURTHER CONSIDERED AND ORDERED that the Clerk of the Superior Court of Wake County cause certified copies of this judgment and order to be immediately served on the Mayor and Board of Aldermen of the City of Raleigh.

AND FURTHER, IT IS CONSIDERED, ORDERED AND ADJUDGED that the plaintiffs recover the costs of this action.

MICHAEL H. JUSTICE.
Judge Holding Courts of the Sixth District.

The following agreement was also filed in regard to the appeal to the supreme court:

The State ex rel. J. M. Pace and others vs. The City of Raleigh and others.

It is hereby agreed that the record in the appeal in the above entitled case shall consist of the pleadings and judgment, and that said record shall be immediately docketed in the superior court and that a transcript thereof shall be immediately certified to the supreme court, and that the supreme court shall be requested to advance the case for hearing at the earliest practicable moment.

W. B. JONES,
ARGO & SHAFFER,
Attorneys for Petitioners.
W. B. SNOW,
R. H. BATTLE,
Attorneys for Defendants.

LIFE UNDERWRITERS

Mr. Boushall and Mr. Drewry Back From Hartford

Mr. J. D. Boushall, state agent of the Aetna Life Insurance Company, has returned from Hartford, Conn., where he attended the annual convention of the Life Underwriters' Association. This proved to be the most largely attended meeting the organization has held, 220 delegates being present. Two of these were from Raleigh, Mr. Boushall, who is a member of the executive committee and served this year on the nominating committee also, and Mr. John C. Drewry, state agent for the Mutual Benefit Life Insurance Company of New Jersey.

The delegates were magnificently entertained in Hartford. They were tendered a reception by the local association, an automobile ride over the city and parks and to the country club where they had luncheon; a theatre party and a grand banquet in Foot Guards hall where excellent speeches were made on the subject of insurance by distinguished guests. Mr. Boushall also participated in a banquet given at the Hartford club to the general agents of the Aetna Life. There were about sixty companies, the most prominent in the United States, represented in the convention. The central thought was social and one of the purposes is to uphold and foster the high standard in character and life set by these companies for their officials in the states. A notable feature was the presence of a delegation representing the New England Women Life Underwriters' Association of Boston. Special courtesies were shown these ladies.

The officers elected for the year were: President, Charles W. Scovel of Pittsburg; first vice president, George Benham; second vice president, R. F. Shedden of Atlanta; third vice president, F. E. McMullen of Rochester, N. Y.; secretary, Ernest J. Clark of Baltimore; treasurer, Eli D. Weeks of Litchfield, Conn.

In Memoriam

Resolutions by the bar of Richmond county, upon the death of John D. Shaw, Jr.:

Resolved, That the death of John D. Shaw, Jr., is a distinct loss to the county of Richmond. From his early boyhood to his untimely death, his life was spent in our midst, being removed from Richmond county only by the creation of Scotland in 1900. For twenty years he was a practitioner at the bar of this court. He was recognized as one of the ablest lawyers in this section of the state. His painstaking care, his zeal and enthusiasm, combined with a high order of ability, won him a large and lucrative practice in this and surrounding counties. As a counsellor he was safe, as a trier of causes he was indefatigable. His bereaved family have the sympathy of the entire bar of Richmond county in this their great loss.

Resolved, That the foregoing resolution be spread upon the minutes of the court, and copies thereof be sent to the family of the deceased, and to the local and state papers for publication.

P. C. WHITLOCK,
L. B. WILLIAMS,
A. S. DOCKERY,
W. M. KELLY,
JNO. P. CAMERON,
Committee.

Voluntary Bankruptcy

A proceeding in voluntary bankruptcy was instituted yesterday in the federal court, the bankrupt being S. W. Harris & Co. of Washington, N. C. The liabilities are stated to be $3,800 and the assets $1,100.

Better Than a Plaster

A piece of flannel dampened with Chamberlain's Pain Balm and bound on the affected parts, is better than a plaster for a lame back and for pains in the side or chest. Pain Balm has no superior as a liniment for the relief of deep seated, muscular and rheumatic pains. For sale by W. G. Thomas, Robert Simpson and Bobbitt-Winne Drug Co.