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## ARGUMENTS TODAY ON LEASE OF RAILROAD

### North Carolina Seeks to Uphold Contract With Howland Company

### QUESTIONS OF LAW FOR JUDGE LONG TO DECIDE

Solicitor Moore, for the Plaintiff, contends that Supreme Court's Interpretation of Atlantic & North Carolina Railroad Company's Charter Should Be Overruled—Attacks Freight Rates and Speaks of Future of the Section—Mr. Ward Holds That Lease Was Legal and That State Cannot Violate Its Contract.

(By W. G. BRIGGS.)  
New Bern, N. C., March 17.—The argument before Judge B. F. Long here today in the Hill suit to annul the lease of the Atlantic & North Carolina Railroad attracted an audience of less than fifty New Bern people, including interested parties. Three hours has been assigned each side for argument and Solicitor L. I. Moore, in opening the discussion for the plaintiffs, consumed an hour and forty minutes. The solicitor contended that Judge Long should overrule the supreme court's interpretation of the company's charter and hold with the dissenting opinion of Judge Bynum that the language of the charter did not authorize a lease and the act was void.

In speaking of the increase in freight rates in violation of a covenant of the lease the solicitor declared: "If this does not annul the lease then I charge that the lease was loosely drawn."  
Mr. Moore further contended that the lessee corporation was insolvent, so far as the people knew and closed with a glowing picture of eastern Carolina's future and the possibilities of the road under state ownership.

A. D. Ward occupied fifty minutes in replying and devoted himself to maintaining that the lease was legally authorized, that the state could not violate its contract and that the company could lease for a period longer than its charter.  
Attorney General Gilmer, in the last argument before a recess for dinner, made a vigorous and powerful reply to Solicitor Moore. The faith of the great state of North Carolina was pledged to this lease, he declared the attorney general, and he was here to uphold the credit of the commonwealth.

This lease was made after twelve months' deliberation and the careful consideration of numerous bids and if a technicality existed, which he denied, what security would there be for home or foreign capitalists if this solemn, duly executed contract was to be deliberately broken?  
Argument will be resumed at 2 p. m., and will not be concluded until nearly 5 o'clock.  
Judge Long will probably reserve his decision.

**That Parties to the Suit.**  
The suit is brought by Hill and others against the Atlantic and North Carolina Company, successor of the Howland Improvement Company, to annul a lease made by the Atlantic and North Carolina Railroad Company to the Howland Improvement Company at Morehead City, September 1, 1904.

The plaintiffs in this action are first, W. F. Hill, who owns two shares of the stock; second, C. E. Foy, a director of the road who voted against the lease when it was made but subsequently attended a meeting of the directors and made the motion to appoint a committee to pay the dividends from the lease money, and, third, the county of Craven. However, Craven's stock was voted for the lease when it was made and it is doubtful whether it can now be joined in an effort to set aside the contract it helped to make. The attorneys for the plaintiffs are Solicitor L. I. Moore of Greenville, W. W. Clark of New Bern, and O. H. Gulon, speaker of the state house of representatives, also of New Bern.

The attorneys upholding the validity of the lease are Attorney General R. D. Gilmer, representing North Carolina (the state owns 12,656 of the 1,339 shares of stock in the road

and all the state's stock was voted for the lease); Ex-Governor C. B. Aycock of Aycock & Daniels, Goldsboro, for the lessee, the Atlantic and North Carolina Company; A. D. Ward of New Bern, and Chas. M. Busbee of Busbee & Busbee, Raleigh. Mr. Busbee, who is himself a director of the road, appears in this hearing as the attorney for Mrs. Florence P. Tucker, Mr. E. C. Duncan and the other large private stockholders. P. M. Pearsall appears for the defendant.

**Grounds for Attacking Lease.**  
The plaintiff began this suit in the superior court of Craven county and the matter was heard before Judge B. F. Long, who found the facts upon agreement of counsel, and the argument was set for today at New Bern.

The plaintiff seeks to set aside the lease of this road, running from Goldsboro to Morehead City, upon the allegation that the charter of the Atlantic and North Carolina Railroad Company did not authorize its execution, therefore the act of the lease was ultra vires.

Another allegation in the complaint, which was argued by the plaintiff's counsel, was that the lessee corporation has not complied with certain provisions in the lease with reference to freight rates. In his finding of facts the judge found that there had been a readjustment of rates and that while some had been increased others had been lowered.

**The Lease Legal.**  
Counsel for the lessee corporation today argued that inasmuch as the lease was executed on September 1, 1904, and that the plaintiffs did not bring their suit until a little more than twelve months thereafter, that they cannot now seek to annul the lease. This argument was based upon the ground that on September 22, 1904, after the lease had been made on the first of that month, the stockholders met in regular annual meeting and the president of the road reported that the same had been leased and gave the terms of the lease.

For the defendant it was further contended that inasmuch as the lessee corporation had, before the execution of the lease and before the inauguration of this suit to annul, spent in improvements about \$158,000 in moneys not arising from the income of the road and shares of stock have been issued, which passed into the hands of purchasers, that it would be inequitable, under such circumstances, to annul the lease since the annulment would injuriously affect third parties.

As for the plaintiff's denial of authority to make the lease, counsel for the lessee corporation cited that in 1872 the supreme court of North Carolina held that a lease made by the North Carolina Railroad, under a provision in its charter similar to that which appears in the charter of the Atlantic and North Carolina Railroad Company, the lessor company had power to execute the lease. This the state's highest court has frequently reaffirmed, and in Logan vs. Railroad, 116 N. C. Reports, Justice Avery, in the opinion of the court, says: "The question of the authority of the lessor company to farm out its franchise to the lessee is no longer an open one."

**An Adequate Remedy at Law.**  
Counsel further insisted that the lessee company has not failed to perform the covenants contained in the lease. Further than this, even if it should appear that there have been any violations of the terms, an action at law for damages will afford the proper remedy, therefore the aid of a court of equity to annul the contract cannot be maintained, inasmuch as the lessee company, under specific provisions of the lease, now has on deposit bonds amounting in value to more than \$100,000 to make good any default in its contract.

Another point upon which counsel for the lessee corporation insisted, and supported with citations of legal authorities, was that since the directors of the lessor company have no right, under the circumstances, to maintain this suit that a stockholder would have no higher right than the board of directors itself.

There are one or two other minor points in the complaint, such as the publication of notice and the time of the deposit of the requisite \$100,000 by the lessee company, which were practically disposed of in the finding of facts and were not regarded as pivotal in the argument of the suit.

**Result of Annulment.**  
While counsel emphasized strictly the legal questions involved the audience was not left unmindful of the

fact that whereas formerly dividends on this stock were rare, and were paid only at the expense of better equipment and maintenance, now the 3 per cent. annual dividend, which will be gradually increased, amounts to \$54,000 a year, of which the state receives \$36,000.

Besides for the state to again take over this property the lessee company must be reimbursed about \$300,000 and the accomplishment of this would mean, it is believed, either the sale of the road or largely increasing its mortgage debt to the depreciation, and perhaps ruin, of its stock.

If the railroad should be sold then the unknown holders of \$135,000 bonds—issued just before the civil war to complete the road and guaranteed by the state's stock,—with 40 years' interest, may intervene and say that the money shall not be paid until their lien is satisfied. While a citizen cannot sue the state yet, under the famous South Dakota decision, the bonds could be placed in possession of another state and an action could be maintained. While no mention of these mysterious outstanding bonds appears in the record in this Hill suit interested persons are not unmindful of the fact that they exist and the matter is the subject of gossip when this litigation is discussed.

**Postmaster at Dwight.**  
(By The Associated Press.)  
Washington, March 17.—The following fourth-class postage rates have been appointed:  
New York—Dwight, Lizard  
Lizard.

## THE TROLLEY MUDDLE

### Guilford Still Turns Down Philadelphia Folks

But High Point Granted the Franchise to the Philadelphia Syndicate and Refused it to the Justice People—So Things are at Sixes and Sevens.

(Special to The Evening Times.)  
Greensboro, N. C., March 17.—The county commissioners met in special called session here yesterday afternoon to confer with Mayor Wrenn and others of High Point over the question of granting a franchise to Philadelphia capitalists for a trolley line over the county roads between High Point and Greensboro. After hearing several parties including Mayor Wrenn, E. D. Steele and R. R. King, in favor of granting the franchise the board went into executive session and decided to defer action until next Tuesday.

Upon learning of this decision, Messrs. Steele and King, in behalf of the parties seeking a franchise, insisted on having a decision at this meeting, and just at night the members of the board were gotten together, and by a vote of three to two decided to reconsider the former action refusing a franchise.

At the regular meeting the first Monday in March, the board granted a franchise to E. J. Justice as trustee for a syndicate of capitalists whose names he did not divulge, and refused to grant a franchise the next day to the Philadelphia concern represented by R. R. King and E. D. Steele of High Point.

The High Point officials granted a franchise to the Philadelphia concern and refused to grant Mr. Justice a franchise. At the session yesterday Attorney C. W. Sapp stated to the board that he had received a long distance telephone message from Mr. Justice, who is out of the city, urging the board to defer action in granting the Philadelphia franchise until he could be personally present and make a statement, that since he had been granted a franchise there had been certain important developments which he desired to explain to the commissioners.

**Shamrocks in Rome.**  
(By The Associated Press.)  
Rome, March 17.—There were abundant shamrock decorations today in the three Irish Catholic churches here, in honor of St. Patrick's Day. Cardinal Logue, archbishop of Armagh and primate of all Ireland, celebrated pontifical mass. He also delivered a short address and sent his greetings not only to the Irish in Ireland, but to those across the seas.

## MIGHT DELAY WORK ON CANAL

### House and Senate in a Deadlock Over the Type

### LITTLE CHANCE NOW

Senate Committee Disturbed Over Statement by Mr. Hepburn and if No Bill is Passed the Construction of a Lock Canal Will Proceed—Only Solution to be Offered Now.

(By The Associated Press.)  
Washington, March 17.—The senate committee on interoceanic canals heard with many misgivings the reported statement by Representative Hepburn that the house committee would not be willing to accept the senate hearings to determine the type of canal to be constructed across the Isthmus of Panama. This is taken as an indication that congress will not be able to agree upon a bill deciding the type of the waterway unless the session of congress is long continued.

## DELAY GRANTED YOUNG SHEPARD.

(By The Associated Press.)  
Paris, March 17.—The authorities have granted six months' delay in the case of Elliot F. Shepard of New York, who was sentenced to a fine, to pay an indemnity and to three months' imprisonment for running over and killing a girl while driving in his automobile at St. Ouen in April last. This is considered a virtual abandonment of the imprisonment part of his sentence which ultimately will be changed into an additional fine.

## COUNTESS NOT ABLE TO ATTEND.

(By The Associated Press.)  
Paris, March 17.—Judge Ditté, president of the first tribunal of the Seine, summoned the Count and Countess Boni De Castellane today for the purpose of seeking a reconciliation under the wife's last application for absolute divorce. The countess, formerly Anna Gould, was present with Edmond Kelly, her lawyer. The count's attorney presented a certificate from a doctor saying that the former was sick and unable to be present in court. The hearing was then adjourned for a fortnight.

## RAILROAD FIRE AT BRYSON CITY TODAY

(Special to The Evening Times.)  
Asheville, N. C., March 17.—A special today from Bryson City says news has just been received to the effect that a fire this morning destroyed W. J. Oliver's warehouse and commissary at Bushnell. The buildings destroyed contained general railroad supplies for cramps at the new road from Maryville, Tenn., to Bushnell. The estimated loss is \$10,000.

## HOLTON'S NAME HELD UP YET

(By The Associated Press.)  
Washington, March 17.—The nomination of Alfred E. Holton to be United States District Attorney for the western district of North Carolina was considered today by a sub-committee of the senate committee on judiciary. No decision was reached. Objection to the appointment was made by Representative Blackburn on the ground that Holton had engineered a political persecution of him in relation to his recent indictments.

## MINERS WANT WOMEN TO VOTE

### Female Suffrage Endorsed at Convention Today

### FUNDS FOR PRISONERS

Five Thousand Dollars Voted To Help Defend Alleged Conspirators Under Indictment in Idaho.—Defeated Proposition Looking to Government Ownership of Coal Mines.

(By The Associated Press.)  
Indianapolis, Ind., March 17.—The convention of the United Mine Workers of America today voted \$5,000 for the legal defense of C. R. Mayer, W. D. Heywood and Pettibone, officers of the Western Federation of Miners, who are under indictment in Idaho charged with conspiracy. The executive boards were authorized to spend additional funds for the defense of the men if more money should be needed.

## SALISBURY WANTS IT

### Citizens Begin Work to Get Another Railroad

Rousing Meeting Last Night at Which Proposition of Voting Bonds for Norfolk & Western Extension Was Considered—Committee Named to Engineer the Movement.

(Special to The Evening Times.)  
Salisbury, N. C., March 17.—When Thomas H. Vanderford last night called for a standing vote on the proposition of voting \$100,000 bonds for the extension of the Norfolk & Western road from Winston to Monroe, almost every man of the large audience arose to his feet. The enthusiasm of the gathering was intense. At 8 o'clock, the meeting hour, there were not half a dozen, but within the next thirty minutes the court room was pretty well filled. The "Chester Hill Band" played enlivening music. Edwin C. Gregory was made chairman and in a few words declared the object of the meeting to be one not of hostility to the Southern, but a business matter entirely. W. B. Strachan was elected secretary and Col. John S. Henderson spoke delightfully for twenty minutes. His recital of Salisbury's last opportunity was pathetic. In his day he could recall railroads to increase her population to 200,000.

Mayor Bevelin spoke for future Salisbury and Walter Murphy was tremendously effective in his argument for the new road.

At the close a committee on ways and means was appointed with Col. Henderson as chairman and N. B. McCann, T. H. Vanderford, L. E. Heilig, J. M. Maupin, T. B. Brown, R. A. Rainey and Walter Murphy as subordinates. These will petition the legislature through the people for an election on bonds and confer with the Norfolk & Western people.

## WILD STORY BY AN OPERATOR.

(By The Associated Press.)  
Pueblo, Colo., March 17.—When advised of the report that the night operator at Swallows, S. F. Lively, had made a confession in which he acknowledged his responsibility for the collision of the two passenger trains on the Denver and Rio Grande Railroad near Florence early yesterday morning which resulted in a disastrous wreck and that Lively claimed to have been in a condition of stupor at the time, owing to a long watch at his post, local officials of the Denver and Rio Grande denied positively last night having any knowledge of such a confession.

## SHORT SHIFT FOR REFUGEES

### Shot Down Like Dogs on the Russian Frontier

### THE FACTS PROVE IT

In Spite of Official Denial, Evidence Shows That Undesirable Flock Sent Back to Russia From England Were Killed As Suspects, Slaughtered Without Chance To Escape.

(By The Associated Press.)  
St. Petersburg, March 17.—There is already evidence that only a check and not a defeat has been administered to the reactionists who are conducting the anti-semitic agitation. Premier Witte, after he had forced a decision of the cabinet to suppress the agitation, knowing the audacity of his opponents took the precaution privately to ask the Jewish leaders to notify him instantly whenever the Jewish inhabitants of any locality were threatened in order to place him in a position to insist that measures be taken to protect them.

The Jewish leaders, however, now charge that the reactionary clique with the connivance of sympathetic local governor generals are boldly arranging to block such warnings. The leaders claim to have proof that orders have been given at several places, specifically citing Vitebsk, west Russia, not to transmit messages to the premier warning him of the imminence of the trouble; it is further charged but proof is lacking that this was done with the knowledge of interior minister Durnovo. It has been established that Count Podgorichan, chief of the gendarmerie of Gomel, west Russia, who armed a mob there while ostensibly dismissed by M. Durnovo in reality was only transferred to a better post at Yalta, Crimea.

In spite of the official denial of the shooting of undesirable refugees sent back to Russia from England private information has been obtained tending partially to support the charge. Many of the refugees were sent to Baltic ports where the authorities are showing no mercy to revolutionists despite the emperor's instructions to display greater leniency. When the refugees disembarked, having fled from Russia without valid passports, they were regarded as suspects and some of them were given a short shift.

## TRYING TO SAVE JEWS

### Witte Anxious to Prevent Easter Slaughter

Cables to Chicago That Government Will Make Every Effort to Protect People from Violent Demonstrations By Russian Mobs.

(By The Associated Press.)  
Chicago, March 17.—Adolf Kraus of this city, president of the executive committee of the Independent Order of B'nai B'rith, has received a cablegram from Count Witte, premier of Russia, in which the count declares that it is the intention of the Russian government to protect as far as possible all the Jews in the country from the massacres which it has been reported were to take place at Easter.

The cablegram of Count Witte came in reply to a letter written to him by Mr. Kraus, who informed the premier of the reports that a great massacre of the Jews was to take place at Easter time, and asked if the government is in a position to protect the lives and property of Jews equally with that of Christians and to punish officials who fail to do their duty in not preventing massacres.

The reply of Count Witte is as follows: "Adolf Kraus, Chicago. 'I am sure you have no doubts that I cannot approve violence, no matter against whom it is directed. The deplorable events that have taken place were the result of riots. You may be persuaded the government will use all possible measures to prevent violence against peaceable inhabitants without regard to nationality.'"  
(Signed) "COUNT WITTE"

## BITS OF FLESH TELL THE STORY

### Colorado Wreck is One of Greatest Disasters

### DEATH LIST UNCERTAIN

Conservative Estimates, However, Place the Loss of Life at Thirty-Six—Seventeen Charred Bodies Now in the Morgue and Others May Never be Taken from the Ruins.

(By The Associated Press.)  
Pueblo, Colo., March 17.—While the exact number of lives lost in the Adobe wreck on the Denver & Rio Grande Railroad will never be known, it undoubtedly will take rank among the great disasters in the history of railroads. Conservative estimates on the loss of life place the number of dead at thirty-six. Seventeen charred, mangled and unrecognizable bodies lie in the Pueblo morgue, five other persons are known to be dead and possibly a score of bodies were burned to ashes. There was not a single entire body recovered from the wreckage with the exception of the engineer, who, although mangled had not been reached by the flames that swept through the wrecked cars.

Bits of charred flesh and piles of bones were all that indicated that a holocaust had occurred, but trained eyes picked out the pelvic bones and from these it was seen that so far as the search had progressed no less than thirty-six people had perished.

The following names have been added to the list of known dead: PATRICK MURPHY, Florence, Colo., an oil well driller. RAL FIELDS, aged 19, Keystone, Wyo. MRS. BELLE WEBB, Keystone, Wyo.

Murphy yesterday was reported among the seriously injured. He had dragged two passengers out of a burning car. When he returned to rescue a third a gas explosion occurred and he was burned to death.

Mrs. William Burnside, her daughter and grandchild, said to be from Kansas, were erroneously included in the death list last night.

All the injured, it is believed, will recover. It is not likely that the remains of any of the other victims can be identified.

E. L. Lively, the operator whose failure to deliver the train order that resulted in the collision, has not been arrested and it is considered probable that no action against him will be taken until after the coroner's inquest. Lively says of his failure to deliver the train order:

"I was asleep; that's all."  
It is asserted that Lively had worked for several days without sleep.

Denver, Colo., March 17.—At the office of the general manager of the Denver & Rio Grande Railroad today the announcement was made officially that E. L. Lively, night operator at Swallows, was wholly responsible for the collision at Adobe yesterday. He was asleep at his post, it is said, when train No. 3 to which he was to have delivered an order went by. Later he reported to the train dispatcher at Pueblo that the train No. 3 had not passed Swallows.

Two operators are employed at Swallows. The regular shift was from 7 o'clock in the evening until 7 o'clock in the morning, when he was regularly relieved by the day operator. Officials of the Rio Grande deny that Lively had been required to work over time and say if he had done so his action was voluntary.

## FIVE INJURED IN A WRECK ON MONON

(By The Associated Press.)  
Louisville, Ky., March 17.—Train No. 6 on the Monon, which left Louisville for Chicago this morning was derailed at Horseshoe Bend shortly after 11 o'clock. Five passengers and the baggage man were injured according to the report given out by the Monon officials here, but nobody was killed. The engine tender jumped a curve, and the entire train went down an embankment. The baggage man's leg was broken and one of the passengers is reported seriously hurt.

## JOHANN MOST DIED TODAY.

(By The Associated Press.)  
Cincinnati, O., March 17.—Herr Johann Most, the anarchist, died today of erysipelas.