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THE COMMISSION ADMITS RAILWAY'S LEGAL CONTENTION

The Southern Railway Has, Under the Law, Violated No Order

INJUNCTION DISSOLVED, STATE PAYS COSTS

In Final Hearing Before Judge Purnell On Order Restraining Corporation Commission From Suing the Railway For Penalty Attorney General Gilmer, for the Commission, Declares That There Has Been No Violation On Which a Suit Could Be Brought.

Judge Thomas R. Purnell, in the federal court this morning, after hearing the answer of the North Carolina corporation commission, in which the commission admitted that the Southern Railway had violated no order for which a suit for penalty could be instituted, dismissed the temporary restraining order he had previously issued and taxed the defendants with the costs.

The frank admissions of the corporation commission, through Attorney General R. D. Gilmer as counsel, established the contention of the Southern Railway, for the attorney general declared that the commission held that it could not sue for a penalty unless the defendant had failed to file exceptions within ten days, and furthermore that no such suit could be brought in this because the commission's order had been vacated by the withdrawal of the petitions upon which it was based.

Saturday night, June 9th, the corporation commission made an order and had the same served upon the Southern Railway commanding that railroad not to put into effect the new schedule on train No. 111, which was to leave here at 11:59 p. m. instead of 1:40 a. m., until the final hearing on the order of June 2, which commanded the railroad to show cause why it should not be prevented from changing the schedule. The Southern Railway had advertised its new schedule to become effective Sunday, June 10, so the order of Saturday night was not obeyed.

Monday, June 11, the Southern Railway secured in the federal court an order, returnable today, restraining the corporation commission and three petitioners, J. W. Scott, R. C. Lawrence and F. K. Ferguson, from suing the railway for the \$500 a day penalty for violation of the commission's order.

Tuesday, June 12, the Southern Railway filed its exceptions with the corporation commission, also a petition for the removal of the matter to the federal court, since interstate commerce and the transfer of United States mail were involved. The corporation commission decided to meet Friday, June 15, and fix a time for the hearing. However, Friday morning Mr. R. T. Gray, counsel for the News and Observer, appeared before the commission and withdrew all petitions against the change in the schedule of No. 111. The attorneys for the Southern Railway then stated that they were ready to have dismissed the restraining order in the federal court.

Today was the time fixed for the final hearing on this injunction. The attorneys present before Judge Purnell at 11 o'clock were Attorney General R. D. Gilmer for the corporation commission, and Mr. F. H. Busbee, Mr. James H. Pon and Mr. A. B. Andrews, Jr., for the Southern Railway. Could Collect No Penalty.

The complaint of the Southern Railway and the answer of the corporation commission were read. Attorney General Gilmer then stated that before the final hearing the petitions filed with the corporation commission had been withdrawn and the previous order thus vacated so there was nothing for the commission to bring suit for a penalty on, even if it so desired.

For the railway Mr. Busbee then reviewed the steps taken in this matter. "When the corporation commission Saturday night, June 9, made an order in the nature of an injunction restraining the defendant company from operating its train on the published schedule, which was to go into

effect next day, how could we tell that the order did not mean what it said?" enquired Mr. Busbee. "While the order read that the new schedule should not go into effect the next day, how did we know that the commission held in mental reservation that we were not expected to immediately obey the injunction but had ten days to file answer?" The commission at that time was not favored with the advice of the able attorney general, Mr. Busbee observed. He was glad that the commission saw the law now as the defendant company had pointed it out in the exceptions or answer and it only remained for this court to dismiss the restraining order.

Mr. Pon added to what Mr. Busbee stated that this injunction was necessary at the time it was issued to protect the company from an onerous penalty. Now the commission admits the legal contentions of the railway. Attorney General Gilmer again declared that in no case had the corporation commission, which alone can bring suit for penalty attempted to collect a penalty for the violation of an order until the defendant had had the opportunity—ten days under the law—to file answer.

State Pays the Costs. Nearly all the points involved, so Judge Purnell stated, had been decided in the Greensboro ice and coal case. At the time the restraining order was issued, as the facts then appeared, the order was entirely proper, though perhaps the complainants might have waited a day or two for developments. The corporation commission is given full credit by this court for the faith and sincerity of its answer. Draw up a decree dismissing the bill and tax the defendants with the cost, except the defendant Lawrence, who says in his answer just read that he has no interest in the matter and has incurred and provoked no costs.

The costs amount to not more than \$50, it is said.

The answer of the corporation commission, read by the attorney general, was as follows:

Answer by Commission. United States of America—In the Circuit court of the United States for Eastern District of North Carolina, at Raleigh.

Fourth circuit in equity; Southern Railway Company, Complainant, vs. Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, members of the North Carolina Corporation Commission, J. W. Scott, K. M. Ferguson, R. C. Lawrence, defendants.

The joint and several answer of Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield to the bill of complaint of the Southern Railway Company, complainant. These defendants, reserving to themselves all rights of exception to the said bill and especially protesting that this court has no jurisdiction over these defendants or of the subject matter of this suit, for answer, say:

That it is true that the complainant is, and for several years has been, a corporation in and existing under the laws of the state of Virginia, and is a citizen of the state of Virginia with its principal office and place of business in the city of Richmond, and in the said state of Virginia. And it is also true that Franklin McNeill is a citizen of the state of North Carolina and a resident of the eastern district thereof; that Samuel L. Rogers is a citizen of North Carolina and has his official place of business in the eastern district of North Carolina; that Eugene C. Beddingfield is a citizen of North Carolina and a resident of the eastern district of the said state, and that their co-defendants, J. W. Scott, R. C. Lawrence and K. M. Ferguson are also citizens of North Carolina and residents of the eastern district thereof.

That it is also true that these defendants are now acting as commissioners and members of the North Carolina corporation commission, under and by virtue of the acts of the general assembly of the state of North Carolina, passed at its session of 1905 and prior thereto, all of which said acts are comprised and set forth in the revised of 1905 of North Carolina, chapter 20 sections 1054 to 1127, both inclusive. That it is true that the subject matter of this suit is a controversy between citizens of different states; but these defendants are advised that it is not true as alleged in paragraph one of the bill that the amount involved therein, ex-

clusive of interest and costs, exceeds the sum or value of \$2,000.

That it is true, as alleged in paragraph two of the said bill, that the complainant company owns, operates and controls rolling stock and motive power, together with lines of railway, for the carriage of passengers and freight, United States mail and express matter, and that its lines extend through portions of the state of North Carolina and through other states of the United States. And, it is also true, as therein alleged, that the complainant is, and was, at the time mentioned in the said bill engaged in interstate commerce and in the carriage of the mails of the United States. But these defendants allege that the complainant company is also engaged as a common carrier in the business of transporting passengers and freight between points wholly within the state of North Carolina, and that the subject matter of this controversy does not involve any infringement of the commerce clause of the constitution of the United States or of any act of congress thereunder.

That it is true, as alleged in paragraph three of the said bill, that the complainant operates a train known as train No. 39, for the transportation of passengers, beginning in the District of Columbia and terminating in the city of Atlanta, in the state of Georgia, connecting with other railroads engaged in interstate transportation of passengers; and, it is true, that the said train in its passage through the state of North Carolina passes Greensboro, Salisbury and other important towns on the lines of the complainant company; that while the said train is engaged in interstate transportation of passengers it likewise receives and transports passengers to and from points wholly within the state of North Carolina. That it is also true, as alleged in the said paragraph, that the operation of the additional train therein mentioned on the complainant's road between Salisbury and Asheville was and is necessary to afford proper accommodation for parties desiring to reach Asheville at an early hour and local points along the line of railroad between Salisbury and Asheville.

It is also true that in order to accommodate people east of Greensboro along the line of complainant's road and along the lines of other roads connecting therewith, who desire to reach local stations between the cities of Charlotte and Atlanta and also between Salisbury and Asheville, it is necessary for the complainant to make connection in the city of Greensboro with a southbound train. And these defendants allege that the provisions of the order made by the North Carolina corporation commission on the 9th day of June, 1906, could have been fulfilled and the said connection made with train No. 39 mentioned in the said paragraph of the complainant's bill, and which under its regular schedule leaves the city of Greensboro at 12 minutes after 4 o'clock in the morning of each day, without delaying or interfering with the movements of said train No. 39.

That it is true that the complainant has for some years operated a train known as train No. 111, leaving Goldsboro at 9:40 p. m., and reaching Greensboro at 5:35 a. m.; and it is also true that previous to the 10th day of June, 1906, the said train remained in the city of Raleigh, North Carolina, from 11:45 p. m. until 1:40 a. m., connecting with train No. 84 on the Seaboard Air Line Railway, which said train was due to arrive in the city of Raleigh at 1:05 a. m. And these defendants allege that it would be practicable for complainant's train No. 111 to leave Raleigh at 1:05 a. m., connecting with train No. 84 on the Seaboard, scheduled to arrive in the city of Raleigh at that hour and have sufficient time, according to complainant's passenger schedule, between Raleigh and Greensboro to reach the said city of Greensboro and connect with complainant's train No. 39 referred to in paragraph three of the bill.

That it is true, as alleged in paragraph five of the bill, that the Seaboard Air Line Railway is engaged in interstate commerce, operating trains from Jacksonville, Florida, and beyond, and from Birmingham, Alabama, passing through the city of Raleigh on their way to the cities of Richmond and Norfolk, in the state of Virginia. But these defendants allege that the said trains also receive passengers to and from points wholly within the state of North Carolina; and that prior to the 10th day of June, 1906, passengers on the said train for points on complainant's line, west of Raleigh, were enabled to make connection at Raleigh with complainant's train No. 111. These defendants aver that they are not advised as to the necessity of a connection between the Seaboard train No. 84 with complainant's train No. 111 (Continued on Third Page.)

FATAL COLLISION AT AHOSSKIE KILLED BY A NEGRO TENANT

Engineer and Brakeman Were Killed

TWO WOMEN WERE INJURED

Walter Carter of Windsor, N. C., and O. O. King of Portsmouth, Va., the Dead.—One Freight Train Into Rear End of Another While Shifting Off Cars.

(By the Associated Press.) Norfolk, Va., June 21.—In a rear end collision between trains on the Atlantic Coast Line at Ahooskie, N. C., this morning at 5 o'clock, Engineer O. O. King of Portsmouth, Va., and Brakeman Walter Carter of Windsor, N. C., were killed. Conductor Menahan and an unknown white man were injured. The injured were attended to by three physicians at Ahooskie.

The accident was caused by train 273, Engineer King, Conductor Heeding, running into the rear of train 268, Engineer Menahan, Conductor Menahan, while No. 273 was shifting off cars. The engine of one train and six cars were badly damaged, as well as the engine and six rear cars of the other train. The body of Engineer King was turned over to the undertaker at Ahooskie, prepared for burial and will reach Norfolk on train 102 today. The body of the brakeman was also prepared for burial and forwarded to Windsor, N. C. It is expected to have the main line cleared by 5 or 6 p. m. today. Working trains were promptly sent from South Rocky Mount and Piner's Point to the scene of the accident. It is impossible to place the responsibility at this time.

PENNSYLVANIA'S CAR SUPPLY METHODS

(By the Associated Press.) Washington, June 21.—The interstate commerce commission met today and continued its inquiry into the coal and oil traffic of the several railroads. John B. Thayer, fourth vice president of the Pennsylvania Railroad, took the stand, and under questioning by Thomas Patterson, general counsel for the Pennsylvania, explained the method of car supply and distribution of that road. "The basic principle of the distribution," said Mr. Thayer, "is to take the railroads of the various one factors; their commercial capacity based on the tonnage we have taken for certain periods as another factor, to arrive at the proper percentage, and then, in the distribution of the cars, the individual car and the car which is furnished for fuel for the railroad company is considered against that capacity. That is the method which was partially put into effect in November last in some of the regions, and on January last finally in all the regions on our roads."

DENTAL ASSOCIATION PROCEEDINGS TODAY

(Special to The Evening Times.) High Point, N. C., June 21.—At the opening morning session of the North Carolina Dental Association today the reports of the standing committees occupied the attention of the association for quite awhile. "Has the Study of Chemistry and Metallurgy Due Consideration of the Dental Profession?" by Dr. J. H. Brooks of Burlington, was the first paper. Discussion on the same was opened by Dr. Charles A. McDowell of Waynesville. "My Experience in Oral Surgery as a General Practitioner," by Dr. J. C. Reid of Marion was the second paper, and the discussion was opened by Dr. W. B. Ramsay of Hickory. "A Few Practical Points on Orthodontia," by Dr. P. E. Brown of Winston-Salem was discussed first by Dr. J. A. Gorman of Asheville. "Operative Dentistry," by Dr. J. S. Spurgeon of Hillsboro was opened for discussion by Dr. J. C. Watkins of Winston-Salem.

The Immunity Bill. (By the Associated Press.) Washington, June 21.—The house today sent to conference the so-called "immunity of witnesses" bill, the conferees on the part of the house being Mr. Jenkins, Mr. Littlefield and Mr. DeArmond.

KILLED BY A NEGRO TENANT

John M. Lancaster of Vanceboro the Victim

(Special to The Evening Times.) New Bern, N. C., June 21.—John M. Lancaster, a highly respected citizen of Vanceboro, this county, was shot and killed by a negro tenant, Henry Bailey.

Henry Bailey had been trading at various stores on Lancaster's estate, and the latter had requested him to stop. This led to sharp words, and Bailey then said that he was going to do a certain piece of work for himself, and Lancaster told him not to do it, but to work in the field, as farm work was greatly hindered. The negro refused, and they had a fight. Bailey broke loose and went to his house a short distance away, got a gun and shot Lancaster dead. The slayer coolly viewed the corpse, and seeing his victim dead disappeared in the swamp. A posse of citizens are in pursuit. Sheriff Biddle and Coroner Jones have gone to the place. Lancaster was about 35 years of age and had a family. His wife is prostrated by the tragedy and fears are held for her.

JUMP FROM FERRYBOAT ENDED HIS TROUBLES

(By the Associated Press.) New York, June 21.—A long season of misfortune was brought to a tragic and pathetic end today when John T. Winn threw himself from a ferry boat to the head of his coat, which he left behind on the ferry boat's deck, was a note in which Winn declared that his mind was gradually giving way under the strain of his ill luck. The note directed that the body when found be taken charge of by an undertaker, whom he named, and added, "bury it as soon as possible. Make sure it is dead and plant it at once." Winn was forty years old and made his home with his laborer. The brother said today that John was prosperous and happy a few years ago. His troubles began when his wife and child died within a few months of each other. Then he fell ill himself, his business failed, and he was forced to seek work as a truck driver. His health was such that he was unable to work steadily, however, and worry brought on the condition of mind which led him to end his life.

WOULDN'T ADOPT THE PARTIAL REPORT

(By the Associated Press.) Washington, June 21.—Mr. Fox (R-I.), chairman of the naval affairs committee of the house, today called up the partial conference report on the naval appropriation bill. He stated that but five items were still in conference, the first relating to civil war veterans; second, transferring the naval station at Port Royal, S. C., to the bureau of navigation; third, construction of a graving dock of concrete and granite at Pensacola navy yard; fourth, giving the commandant of the marine corps the rank of major general; and fifth, provisions in relation to the big battleship. The house by a vote of 85 to 1 refused to adopt the conference report.

THE LOCK TYPE CANAL WON OUT

(By the Associated Press.) Washington, June 21.—At 3 o'clock the senate began to vote on the type of the Panama Canal. The vote was on the motion of Senator Kittredge to lay on the table an amendment to build a lock canal. The lock type canal won in the senate, 36-21.

SAYS SHE KNOWS SLAYER'S NAME

Mrs. Stenton Admits Knowledge of Crime

(By the Associated Press.) New York, June 21.—Mrs. Louise Stenton, the aged mother of Mrs. Alice Kinnam, who was charged to death at her mother's home in the Bronx on June 8, declared today that she could name her daughter's slayer, or the person who inspired the crime.

Mrs. Stenton had been closely questioned by the police many times since Mrs. Kinnam's death; but until today she has persistently denied she knew anything whatever of the affair. It is said, however, that she has talked freely with a friend about the revelations made during the search of her house, where a secret room and secret closet filled with silverware and other valuables were found by the police. She is reported to have said that the room in which the slayer was found was not a secret room, but was a store room and contained the accumulations of years. The valuables were either presents to her or had been acquired by purchase. A hearing preliminary to the inquest into Mrs. Kinnam's death was begun today by Coroner McDonald. Forty-six witnesses, nearly all of them living in the vicinity of the house where the murder was committed, have been summoned. The hearing was secret.

One of the witnesses examined by the coroner today was Mrs. Catherine Glah of Philadelphia, who was visiting her daughter near the Stenton home on the night of the murder. Mrs. Glah told her story to newspaper men before she entered the coroner's office. She was returning home from shopping on the night of June 8, she said, and was passing the Stenton home, where she heard three piercing feminine screams. She was so terrified that she remained rooted to the spot for a moment. Then she saw Mrs. Stenton appear on the piazza, she says, with a lighted lamp. A moment later a woman whom she did not know came running after her, and said there had been a murder in the Stenton house. Mrs. Glah said she left the woman and walked on. She said she did not see the man run out of the grounds of the Stenton house.

SENATE COMMITTEE VACANCIES FILLED

(By the Associated Press.) Washington, June 21.—At a caucus of democratic senators today the action of the steering committee in filling committee vacancies was ratified. Senator Clay is given a place on appropriations, Tallaferro on finance, Simmons on commerce, and Overman on public buildings and grounds.

ORTHODOX FRIENDS IN CONVENTION

(By the Associated Press.) Providence, R. I., June 21.—The 25th yearly meeting of orthodox friends was opened at the Moses Brown school in this city today, and will continue for one week. The sessions promise to be of exceptional interest, as prominent members of the society from all parts of the country will participate, including Prof. Thomas Newlin of Guilford College, N. C. Prominent workers of other denominations also will take part in the meetings.

New Building in Durham. (Special to The Evening Times.) Durham, N. C., June 21.—Capt. E. J. Petrish has given the contract for the erection of a handsome three-story pressed brick building on Main street. Work is to begin on the building at an early date.

R. C. LAWRENCE WAS DECEIVED

Fooled Into Signing Petition Against No. 111

Mr. Lawrence Swears He Had No Knowledge of Railway's Motive, Knew Nothing About S. A. L. Connection Here and Simply Signed Petition at Request of News and Observer Man.

Mr. Robert C. Lawrence, a member of the law firm of McIntyre & Lawrence, at Lumberton, files a sworn answer in the federal court declaring that he signed the petition in the matter of Southern Railway train No. 111 upon the representations of a representative of a newspaper (The News and Observer) and now that he knows the real facts he asks that the court not tax him with any costs.

When the Southern Railway, in order to protect itself against penalty suits for running train No. 111 from Raleigh at 11:59 p. m., the new schedule time, secured from Judge Purnell in the United States court an order, returnable today, restraining the corporation commission from suing for the \$500 a day penalty three petitioners, Mr. R. C. Lawrence of Lumberton, Maj. J. W. Scott of Sanford and Mayor F. K. Ferguson of Southern Pines were included with the commissioners. The reason for this was that Messrs. Lawrence, Scott and Ferguson had petitioned the corporation commission not to allow the connection (?) between Southern Railway train 111 and Seaboard Air Line train 84 to be broken. Now Mr. Lawrence files his answer, setting forth that he signed the petition under a misapprehension and was deceived by the News and Observer's representative. The answer in full follows:

Answer of R. C. Lawrence. In the Circuit Court of the United States for Eastern District of North Carolina. Southern Railway Company against Franklin McNeill, J. W. Scott, R. C. Lawrence and others.

R. C. Lawrence, one of the defendants above named, answering the bill herein filed, saith: That as to the allegations of the said bill concerning the motives of the plaintiff corporation in changing the schedule of train No. 111, he had no knowledge or information prior to the filing of the bill; that the defendant signed the petition in the bill at the request of a traveling agent of a newspaper, without any personal knowledge, and relying upon the statements of the agent as to the facts; that this defendant did not know that the Seaboard train No. 84 rarely made connection with the Southern train No. 111, and has no knowledge of this fact now, except by the statements of the bill. That petitioner has no personal interest in the change of schedule, and does not intend, and never has intended to bring any suit for damages against the plaintiff; that he submits the whole matter to the court and will be content with whatever order the honorable court shall make in the premises, but saith that this defendant is not liable for any costs on account of his action in signing a petition to be presented to the Board of Corporation Commissioners, and asks that he be hence dismissed without costs.

R. C. LAWRENCE. Judge Purnell stated in his court this morning that upon this answer, showing that Mr. Lawrence had no interest in the matter and incurred no costs, that he should not be taxed with any costs in the final decree of the court.

SUICIDE ON LONDON EXCHANGE.

(By the Associated Press.) London, June 21.—Demetrius Schilizzi, an old member of the stock exchange, shot himself through the heart in the lavatory of the stock exchange today. Schilizzi was a jobber in the American market, but it is said that he had no financial troubles. His suicide is attributed to domestic worries. His son committed suicide about a year ago.