

THE RALEIGH EVENING TIMES.

VOLUME 27-

TWELVE PAGES TODAY.

RALEIGH, N. C., SATURDAY, DECEMBER 22, 1906.

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PRICE 5c.

THE SUPREME COURT SUSTAINS LEASE OF A. & N. C. RAILROAD IN DECISION HANDED DOWN TODAY

Chief Justice Walter Clark Files Dissenting Opinion, However

END OF SENSATIONAL CASE OF LONG STANDING

Decision is a Bulky Document and
Covers All the Points of Law In-
volved—Judge Long Upheld in the
Opinion That Commonwealth
Acted Within Its Rights When
Leasing the Road to Howland Im-
provement Company—Man Who
Sought to Break Lease Owned Two
Shares of Stock.

In an opinion handed down today
the state supreme court sustained the
lease of the Atlantic & North Caro-
lina Railroad, now a part of the Nor-
folk & Southern. The lease was
made by the state.

All of the justices concurred, but
Chief Justice Clark filed a dissenting
opinion.

Suit to annul the lease was brought
by Hill, the owner of two shares of
stock. The county of Craven was a
party to the suit, and at the recent
hearing in New Bern Judge Long
sustained the instrument made by the
commonwealth.

The Four Allegations.

Suit was brought by the plaintiffs
to annul the lease of the Atlantic &
North Carolina Railroad Company to
the Howland Improvement Company.
The action was commenced by W. F.
Hill in behalf of himself and other
stockholders, but afterwards C. E.
Foy and the board of commissioners
of Craven county came in and were
associated as plaintiffs.

The lease was attacked upon the
following grounds:
First. That the meeting of the
stockholders which authorized the
execution of the lease was irregularly
called.

Second. That the lessee had not
made the deposit of bonds required
to be made before the lease should
become effective.

Third. That the lessee had vio-
lated the contract on its part by in-
creasing freight charges beyond what
they were when the lease was exe-
cuted.

Fourth. That the lessor company
had no power to make lease, and by
doing so it was an ultra vires act.

As to the irregularity of the man-
ner in which the meeting was called,
Judge Walker says no stockholder
who was not present but Hill had
complained of what had been done
at the meeting in New Bern, and the
adjourned meeting in Morehead. Foy
was there and the board of commis-
sioners of Craven county was duly
represented. The meeting was held
on September 7, 1904, first at New
Bern and then adjourned on the same
day to Morehead City. Hill was not
present in person or by representa-
tive. Foy was there and protested
against making the lease, and the
court holds that, consequently, he
was not in a position to complain
of want of notice. It was held that
the silence and inaction of the plaintiff
Hill from September 1, 1904, to Sep-
tember 28, 1905, was a waiver of any
right he originally had to object to
irregularities of which he made com-
plaint. In this connection the court
says: "Before proceeding further, we
cannot do better than direct atten-
tion to the steady and unvarying
current of judicial thought upon this
subject, as indicated in the decisions
of some of the courts whose opinions
are entitled to the highest respect,
and who have had similar questions
under consideration.

"If he (the complainant) wants pro-
tection against the consequences of an
ultra vires he must ask for it with suf-
ficient promptness to enable the court
to do justice to him without doing in-
justice to others." Robe vs. Dunlap,
51 N. J.

As to the second objection as regards
the deposit of bonds—the idea being to
have \$100,000 on deposit to secure the
performance of the stipulations of the
lease—the court holds that the same
reasoning applies to this ground of
complaint as that applied to the first
objection, namely, the want of sufficient
notice of the stockholders meeting. It
is stated that the fact that the deposit
had been made with the Wachovia,
Loan and Trust Company, was called
to the attention of the stockholders by
the president of the company at the

annual meeting held on September 23d,
1905, and if the change of the depository
from the state treasury to the Loan
and Trust Company was not authoriz-
ed and did not meet with the approval
of the stockholders, they were put on
inquiry by the report of the change in
the depository and no complaint was
made, although that was the time to
speak and to raise objections.

"If all this was irregular and unwar-
ranted," the court says, "the court was
right in deciding upon the authorities
we have already cited, that it, as well
as the other alleged objections and de-
fects in the proceedings and transac-
tions, had been fully waived and the
lease in respect to them had been rat-
ified by the subsequent conduct of the
stockholders, including the plaintiffs."

As to the objection concerning the in-
crease in freight rates, the court states
that it is sufficient to say that the stip-
ulation not to raise the rates is in the
form of a covenant without a clause of
forfeiture annexed to it, as there is in
the case of the deposit. It is further
stated that if the lessee failed to
make and keep that good, the lessor
had the right to re-enter and determine
the lease, but not so if the freight
charges were increased.

The court says if the covenant had
been broken and there was a continued
infraction of it, they would not mean
to say that a court of equity could not
afford relief by a mandatory injunction
or other appropriate equitable remedy,
and complete observance of the stip-
ulation, though in the form of a cove-
nant, if sufficient ground is shown for
its interference, and especially if from
the peculiar nature of the covenant the
breach can not be compensated in dan-
gages recoverable at law, or if the legal
remedy would for any other reason be
inadequate.

The fourth objection. Whether the
lease was ultra vires or beyond the
power of the lessor to make, it is
said, was an exceedingly important
matter, but that the difficulty of de-
ciding it had been greatly lessened by
the former decisions of the court. In
this connection the case of the lease
of the North Carolina Railroad in
1871, to the Richmond & Danville
Railroad Company is cited in the
opinion, the same having been for a
period of thirty years. It is pointed
out that sections 18 and 19 of this
charter of said road and the lessor
company in this case giving the
power to "farm out" the right of
transportation are identical an action
was brought by the state to test the
validity of this lease and to enjoin
the company from changing the
guage of the road, it being contended
that the lease was executed without
authority of the law. The court de-
cided, after a careful consideration
of the question at issue, decided that
the power to "farm out" which was
given by the charter fully authorized
the making of the lease and that it
was lawful and valid. A number of
other decisions along the same line
are cited.

The dissenting opinion of Chief
Justice Clark was not on file with
the court this afternoon.

Lease Was Good Business.

The lease of the property to the
Howland Improvement Company was
regarded as the crowning event of
Governor Aycock's administration.
The results were startling, in that
they proved the utter inefficiency of
the management in former days.
The lease, however, did not give sat-
isfaction, and the disgruntled ele-
ment appealed to the superior court
to have it annulled.

Mr. Hill Comes Forth.

When the suit was heard before
Judge Long at New Bern, Mr. Hill,
a stockholder, was the leading spirit
working against the lease. He held
two shares of stock, although at the
time the property was transferred he
was not a stockholder of record. The
county of Craven became a party to
the litigation, and the expense of the
trial, as has been stated heretofore,
fell upon the taxpayers. There was
a big difference of opinion in Craven,
many of the citizens contending that
it was unjust to inflict the burden
upon them when they were not pro-
testing and when they were satisfied
with the action taken by the com-
monwealth.

Grounds for Complaint.

It was alleged by the attorneys for
Hill et al. that the state had no right
to lease the road. There were other
grounds upon which they sought to
have the instrument set aside.

Within the past few months the
railroads in the eastern section of the
state were merged under the name of
the Norfolk & Southern and the At-
lantic & North Carolina was included
in the merger. It has been said all
along that if the supreme court had
decided otherwise from the action
taken today the matter would be
fought in the federal court, and natu-
rally the opinion is pleasing, as it is
considered best and proper and be-
lieved he would take a nap, and laid
down in the wagon. On reaching
here he was found to be dead.

HALF A DOZEN DEAD IN CAGE

(By the Associated Press.)

St. Louis, Mo., Dec. 22.—One miner is
known to have been killed, five others
are believed to be dead and another
was seriously injured by the dropping
of the cage today in the shaft of the
Breese-Trenton Coal Mining Company,
about ten miles west of Cahyle, Ills.
Carlyle is forty-eight miles east of St.
Louis.

The details were learned by long dis-
tance telephone. The accident occurred
as the cage carrying six miners was
descending. The cage had descended
three hundred feet down the four hun-
dred foot shaft when it struck momen-
tarily and then crashed to the bottom
with a noise like an explosion.

It is known that August Poppey is
dead. Walter Schaffner, Herman Hol-
flater, Henry Middelz, Herman Holt-
man and Frank Sarre are buried under
debris and it is feared all are dead.
William Fritz' leg was broken and his
body was bruised.

RUSSIAN COUNT KILLED BY BOMB

(By the Associated Press.)

Tver, Russia, Dec. 22.—Count Alex-
is Ignatieff, a member of the council
of the empire and ex-governor of
Kiev, Volhynia and Podolia, was shot
and killed by an unknown man here
today in the refreshment room of the
hall occupied by the nobles' assem-
bly.

The assassin fired six bullets from
a revolver into his victim's body and
then tried to commit suicide, but was
seized before he could do so, and is
now in custody of the police.

MRS. W. A. GATTIS IS PARALYZED

Mrs. W. A. Gattis suffered a stroke
of paralysis this afternoon about 2
o'clock at the home of her son, Mr.
Charles H. Gattis, and is thought to
be in a critical condition.

Mrs. Gattis, who is about 65 years
old, was down town today, appar-
ently as well as usual. She re-
turned home shortly after 1 o'clock
and complained of a feeling of stiff-
ness in her limbs. Not long after
that she fell to the floor unconscious.

Her younger son, Mr. Lewis Gattis,
was at home at the time, and Dr.
James McGee reached Mrs. Gattis in
a very short time. He found that
her right side was powerless and that
she had lost the power of speech.

Dr. McGee thinks it will be several
days before anything definite can be
determined about Mrs. Gattis' condi-
tion.

LEO AND COMPANY, BROKERS, SUSPEND

(By the Associated Press.)

New York, Dec. 22.—The suspen-
sion of the brokerage firm of Arnold
Leo & Company was announced on
the stock exchange today.

The board member of the firm is
Edgar P. Leo. He has been a mem-
ber of the exchange since 1904.

The firm did a very active busi-
ness, and it is understood that re-
cently it has been carrying a num-
ber of accounts in Reading, which
has been declining recently.

FARMER DIES FROM CORN DRUNK.

(Special to the Evening Times.)

Fayetteville, N. C., Dec. 22.—
Frank Clark, a young farmer of Har-
nett county, died on his way to this
city yesterday afternoon from the
effects of too much "blind tiger"
corn. He told his brother he be-
lieved he would take a nap, and laid
down in the wagon. On reaching
here he was found to be dead.

ROMANCE OF THE GIRL EN MASQUE

Supposed Man Female Spy of Russian Government

DEATH LIFTS HER MASK

Alleged Husband of Three Wives,
Nicholas De Raylan Led a Life
That in Many Respects Was More
Wildly Romantic Than the Career
of Monte Cristo.

(By the Associated Press.)
Chicago, Dec. 22.—The Inter-
Ocean today says:

That Nicolai De Raylan, alleged
woman "husband" of three wives
and confidential secretary of Baron
Von Schlippenbach, Russian consul
in Chicago, was employed by the
Russian government to watch the
consul's office and keep the czar's
emissaries informed as to the activi-
ties of the Jewish revolutionary
bund in Chicago, was discovered yes-
terday.

Isaac Lipschitz, one of the heads
of the Jewish bund and a noted "un-
derground worker" in Russia, recog-
nized a photograph of De Raylan
and declared that the dead secretary,
under the name of Mile Racowitz,
joined the bund in January, 1905.

He said also that "she" had been
made one of the "receivers" of the
famous "dynamite fund" and in-
trusted with \$273, the receipts of a
revolutionary meeting at the west
side auditorium in 1905. For some
reason this fund never reached the
Russian confederates of the revolution-
aries, but no suspicion attached to
Mile Racowitz as portions of the
"dynamite fund" frequently went
astray in transit.

De Raylan also had been suspected
by Prince Engalitchew, Russian vice
consul in Chicago, according to
friends of the prince.

THREE DEAD IN FLAMES

Mother and Two Little Chil- dren Perish Miserably

Firemen Get a Glimpse of the Mother's Anguished Face at a Window, But They See Her No More in Life.

(By the Associated Press.)

New York, Dec. 22.—Mrs. Alice Lynch
McWhitney and her children, Helen, six
years old, and Elizabeth, four years old,
were burned to death in a fire that
destroyed their home at Pompo Lakes,
N. J., early this morning. The mother
and children were the only occupants
of the house when the fire started. Mr.
McWhitney is a jewelry engraver, em-
ployed in New York, and at the hol-
iday time was obliged to remain in the
city during the night.

How the fire started is not known.
Neighbors were aroused by the cries
of Mrs. McWhitney and when they went
to her aid they found the whole lower
part of the house in flames. The vil-
lagers got to work with buckets, but
their efforts to subdue the fire were
futile, and the house was reduced to
ruins.

Mrs. McWhitney had found the escape
of herself and children cut off, and she
was seen standing at a window ap-
pealing for help. Before a ladder could
be procured Mrs. McWhitney fell over-
come by the flames. After the ruins
cooled sufficiently a search was made
for the bodies. In the cellar was found
a portion of Mrs. McWhitney's body and
a fragment of the body of one of the
children.

BASHFUL BOW OF A HUGLESS WALTZ.

(By the Associated Press.)

Chicago, Dec. 22.—"Hugless" dancing
and "waterless" swimming are to be
taught in the Chicago public schools
beginning January 2. The 270,000 pupils
will balance forward and back trip
through the rhythmic steps of the
stately mazurka, glide gracefully into
waltzes and two steps, trip through
polkas or dash over the floor in an old-
fashioned galop. But they will trip,
slide and dash alone. No youthful arm
will be allowed to belt the gleeful waist,
and they won't even know that they
are dancing because in the curriculum
the "hugless" dancing is catalogued as
"fancy steps." As for the "swimming,"
the pupils will be allowed to hang
themselves from diving, hickory rings
and go through the motions of swim-
ming in mid air.

ANGRY NEGROES USE HOT WORDS

Savagely Denounce President for Discharging Battalion

HE HONORS LYNCHERS

So They Declare, Adding That the
Blood of Innocent Men and Women
Slain by Red-Handed Clans of the
South Cries Aloud to God for Ven-
geance.

(By the Associated Press.)
Philadelphia, Pa., Dec. 22.—William
A. Sinclair, president, and N. F. Mos-
sell, secretary of the local branch of
the Constitutional League, today sent
a lengthy message to President Roose-
velt denouncing the action taken in
dismissing the members of the 25th in-
fantry. After protesting against his
"superheated denunciation of the col-
ored troops" the message takes up
the reference to shedding criminals
and charges that even up to the present
day "murderous organizations of white
men in the south are carrying on their
war on the colored people." The mes-
sage continues:

"These secret clans hesitate not to
assassinate United States government
officials and band together to shield
and protect each other. They are sup-
ported by white people and have very
recently seized and lynched a prisoner
who was in the custody of the supreme
court of the United States, and while
the lynchers were in Washington an-
swering the charge of contempt before
the supreme court of the United States
the nation was shocked by the fact
that the president received and honored
the lynchers at the white house. As a
matter of fact no people has shielded
more criminals and covered up more
crimes than the white people of the
south. And in the south the blood of
more innocent men and women, slain
by brutal red-handed white clans, cries
from the ground unto the vengeance of
God than in all the other parts of the
country put together."

The correspondence includes let-
ters passing between Brigadier Gen-
eral Tyler, commanding at Camp
Douglas, Chicago, and officials of the
war department and pension office
at Washington. In a letter to Ad-
jutant General L. Thomas at Wash-
ington, dated Chicago, October 22,
1862, General Tyler uses the words
"This regiment (the Sixtieth Ohio
volunteers) is disorganized, mutinous
and worthless." "The officers," he
adds, "have not the least control over
the men, the men are mutinous, and
I am absolutely without power to en-
force subordination."

He asked that the question of the
discharge of the regiment be brought
before the secretary of war. "It
will," General Tyler adds, "rid the
government of a worthless regiment."
Next is a telegram from General
Thomas directing the muster out of
the regiment, both officers and men.
A note in the correspondence says
the organization of the Sixtieth reg-
iment was completed on or about Feb-
ruary 28, 1862. This is followed by
the recitation of a war department
record, dated October 27, 1874,
signed by Assistant Adjutant General
Thomas M. Vincent, which says:

"Make the necessary notation on
the proper rolls to show that the Six-
tieth Ohio volunteers (one year or-
ganized), captured and paroled at
Harper's Ferry September 15, 1862,
was mustered out November 10,
1862, by an order—telegram dated
October 27, 1862—from this office,
by reason of its being disorganized,
mutinous and worthless."

The last letter in the correspon-
dence is from General Tyler to General
Thomas, dated October 23, 1862, in
which he tells of a spirit of "insub-
ordination bordering on mutiny"
among the men of the camp, due to
the insubordination of the Sixtieth
regiment, and to the fact that he had
to order the entire regiment under
guard, with good results.

FAINT HOPE HELD
OUT FOR CAFFREY.

(By the Associated Press.)

New Orleans, La., Dec. 22.—The
condition of former United States
Senator Caffrey, who is suffering
from acute kidney trouble, was prac-
tically unchanged early today. His
physicians hold out only faint hope
that the aged senator will be able to
resist the attack.

Mr. Caffrey came to New Orleans
last Tuesday to attend the session of
the supreme court. Yesterday after-
noon, while in his apartments at the
Cosmopolitan Hotel with his daugh-
ter, he was stricken with pains that
resulted in unconsciousness. Physi-
cians were immediately summoned
and diagnosed his ailment as cardiac
trouble.

CARLOAD OF MAIL MATTER HAS GONE UP IN SMOKE.

(By the Associated Press.)

Muskogee, I. T., Dec. 22.—A car-
load of mail matter from Texas points
and consisting principally of Christ-
mas packages was practically de-
stroyed south of here late yesterday
by the burning of a mail car on a
fast northbound Missouri, Kansas &
Texas passenger train.

RALEIGH AND PAMLIKO MAY BUILD A BRIDGE OVER PAMLIKO RIVER

MR. ROOSEVELT WRITES AGAIN

Quotes Civil War History in Reply to Foraker

MUSTER OUT OF TROOPS

Correspondence Regarding the Six-
tieth Ohio Regiment of Infantry
Given Out at the White House.
Matter Has Bearing on Action in
Brownsville Affair.

(By the Associated Press.)

Washington, Dec. 22.—Correspon-
dence regarding the muster out of the
Sixtieth Ohio regiment of infantry,
concerning which Senator Foraker,
in a speech in the senate this week,
took issue with President Roosevelt,
was given out at the white house
today. Reference to the muster out
of the regiment was made by the
president in his answer to the senate
resolution asking for information
bearing on the discharge "without
honor" of a battalion of the Twenty-
fifth regiment of infantry for alleged
participation in the trouble at
Brownsville, Texas.

The correspondence includes let-
ters passing between Brigadier Gen-
eral Tyler, commanding at Camp
Douglas, Chicago, and officials of the
war department and pension office
at Washington. In a letter to Ad-
jutant General L. Thomas at Wash-
ington, dated Chicago, October 22,
1862, General Tyler uses the words
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ter, he was stricken with pains that
resulted in unconsciousness. Physi-
cians were immediately summoned
and diagnosed his ailment as cardiac
trouble.

Will Cross the Stream Op- posite the Town of Washington

LOWER COURT REFUSED TO GRANT INJUNCTION

Case Was Argued in the Supreme
Court Last Week—Opinion Writ-
ten by Judge Connor—Testimony
as Adduced in the Hearing Before
Judge McNeill Was Very Conflict-
ing—When Effort Was Made to
Prevent Construction of the Bridge
It Did Not Cause Work to Be
Stopped—Railroad Officials Felt
Confident They Would Be Sus-
tained by Courts and Bridge is
Nearly Completed.

The Raleigh & Pamlico Railroad
will be allowed to build the bridge
over the Pamlico river, the supreme
court having affirmed the opinion of
the lower court in a decision handed
down this morning. Case was ar-
gued last week. The bridge has been
nearly completed, the railroad com-
pany having gone on with the work,
feeling confident that they would win
out.

It was entitled LeRoy Pedrick et
al. vs. Raleigh & Pamlico Sound
Railroad Company and was from
Beaufort.

This was an action brought by citi-
zens of the town of Washington for
the purpose of enjoining defendant
corporation from constructing and
maintaining a bridge across the Pam-
lico river at a point opposite the city,
it being alleged that the erection of
said bridge would impede navigation.

A motion for an injunction was
heard before Judge T. A. McNeill on
October 15, 1906, which motion was
denied, and plaintiffs appealed.

In an opinion written by Judge
Connor he says, in part:

"It is not seriously contended that
the proposed bridge will obstruct—
that is, altogether prevent—boats,
barges or rafts passing up and down
the river, or that in the mode of its
construction, in respect to the draw
and the caisson, upon which it rests,
the most approved methods have
been adopted. The objection is di-
rected to the location of the bridge,
and not to its kind or construction.

"The case of Eaton vs. N. Y. and
L. B. Railroad Company, 24 N. J.,
which was a bill to enjoin the con-
struction of a bridge over a naviga-
ble water, and in which the chan-
cellor said:

"The work which is sought to be
enjoined is a public enterprise of
much importance to the people of
the state, who, through their legis-
lature, have authorized its construc-
tion. I find no evidence of bad faith
on the part of defendant, nor even
any interpolation of it. This court
is always reluctant to stay the pro-
gress of such enterprises and will only
do so in a case clearly calling for its
intervention."

Judge Connor says: "The observa-
tions of the chancellor in Eaton vs.
N. Y. and L. B. R. R., supra, in this
aspect of the case, are in point. It
may be proper to say that we do not
concur in the view pressed by de-
fendant, that the decision of the se-
cretary of war permitting the location
of the bridge is conclusive. The
control of its navigable waters is with
the state, the authority of the gen-
eral government being only cumula-
tive protection from an interfer-
ence with commerce.

"Upon careful review of the evi-
dence and authorities, we concur with
his honor and his judgment must be
affirmed."

Five Per Cent Increase in Wages.

(By the Associated Press.)

Salem, Mass., Dec. 22.—An in-
crease of 5 per cent in wages was an-
nounced today at the mills of the
Naumkeag Steam Cotton Company
of this city. The increase will go
into effect December 31 and will ap-
ply to about 1,500 employes. The
Naumkeag Company has never cut
the wages of their mill hands to con-
form to the prices paid in other
cities.