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MYSTERIOUS MAN IS FOUND

Says He Is the Man Who Was On Midlothian Turnpike On the Night of the Murder

HAD STOPPED HIS AUTO

Was Working on Machine When Boys Passed Him on the Way From Bon Air and It Was He to Whom They Offered Help—This Evidence, If Taken as Facts, Knock a Hole in the Prosecution's Case as It Had Contended That the Man Tinkering With the Car Was Beattie—Kestelberg Hesitates About Giving Evidence, But Finally Came Forward Out of a Sense of Duty.

Chesterfield Court House, Va., Sept. 2.—Charles Kestelberg, of Richmond, the mysterious witness whose discovery yesterday caused counsel for the defense in Henry Clay Beattie's trial for wife-murder to interrupt the examination of witnesses for nearly an hour, came forward today with the declaration that it was he who was motoring on the Midlothian turnpike on the night of the murder and stopped his machine to get some water, while the woman with him stood on the running board of the car. Kestelberg's testimony, if accepted as fact, neutralizes the evidence offered by the prosecution in many important respects, because the commonwealth had held that it was Henry Beattie who was crouching in front of the machine on the turnpike while his wife was standing on the running board and was shot, her fall causing a big blood spot on the road. A crowd of boys, coming from a dance at Bon-Air, had testified for the prosecution that they saw a man and woman and offered them help but it was refused.

Kestelberg is a wholesale butcher. "It was I who was on the Midlothian turnpike that night," said Kestelberg to an Associated Press representative before court opened today. "I saw the crowd of boys pass and they offered me help, which, I said was unnecessary. I have hesitated to give my information about the case to anybody." Kestelberg said he felt it in the interest of justice to make a clean breast of what he knows.

Several threatening letters came in Judge Watson's mail. One told him if Henry Beattie were convicted and sent to the chair, his own years would be numbered. Another, from Newbrighton, Penn., declared that the gun with which Mrs. Beattie was murdered, was not in Virginia, now and Paul Beattie never saw it. Still another, signed "Eye Witness," says neither Henry nor Paul had committed the crime and made threats against the judge and jury in the event of the conviction of prisoner. All were anonymous.

Judge Watson smiled over them. The commonwealth counsel have been receiving mysterious letters and messages. One came from New Orleans yesterday to Prosecutor Wendenburg and said, "Prosecute Paul Beattie. He's guilty."

The deposition of Mrs. Steger, who, it is alleged, saw the highwayman on the road near her home, was not taken, as counsel for the defense admitted that what she knew was of little account.

Court convened at 10:30 o'clock. (Continued on Page Two.)

AVIATOR BURNED TO DEATH IN MIDAIR

Troyes, France, Sept. 2.—Lieut. De Grally, while making an aeroplane flight from this city was burned to death in midair. The disaster probably was caused by the explosion of a fuel tank, burning fluid being scattered over the machine. The blazing machine fell with the pilot at Rigny Le Nonneuse, about twenty miles from here, and was completely incinerated.

To Visit Newport News. Halifax, N. S., Sept. 2.—Following a two week's stay at Halifax the German cruiser Victoria Louise sailed today for Newport News. She has about 50 cadets of the German navy on board.



Mrs. Upton Sinclair, wife of the sage of Utopian Arden, whose husband is working with his lawyers in drawing up his plan of action to divorce her because of her alleged relations with Harry Kemp, the youthful poet of Kansas.

SENSATION IS SPRUNG

Mayor and Superintendent of Health Are Arrested

Warrant Charges City Officials With Maintaining and Allowing a Nuisance—Cause of Action Jacob's Run Sewer—Mental Condition of Mrs. Rosa Horowitz Investigated—Cripple Man Robbed.

(Special to The Times.)

Wilmington, N. C., Sept. 2.—A sensational action was started early yesterday afternoon before Magistrate G. W. Bornemann, when Mr. J. C. King, of the Wilmington Pressing Club, 10 north Third street, signed a warrant against Mayor Jos. D. Smith, of the city of Wilmington and Dr. Chas. Nesbitt, city superintendent of health, charging them with maintaining and allowing a nuisance. The cause of the complaint is Jacob's Run sewer, which passes in front of Mr. King's place of business. During frequent heavy rains recently there has been complaint of the sewer overflowing. The warrant makes the allegation that the two defendants "for about thirty days during the month of August, did allow a common nuisance, Jacob's Run sewer on Third, between Market and Princess streets, after being notified that same was a nuisance."

The paper was placed in the hands of Deputy A. L. Kelly to be served on the mayor and the superintendent of health, and the officer stated that he would serve the papers immediately.

It will be remembered that there was complaint of Jacob's Run recently. Mr. W. N. Harris, a deputy clerk of the superior court, is said to have written a strong letter, complaining of the sewer. The warrant shows quite a number of court officers as witnesses. The names of Mr. Harris, W. H. Howe, janitor of the court house, W. A. Williams, clerk of the county auditing committee; Deputy Sheriff A. L. Kelly, (who was to serve the warrant); Deputy Sheriff Harvey Cox and Assistant City Attorney George L. Peschau, were given on the paper as witnesses to be summoned in the matter.

Following an investigation Thursday afternoon into the mental condition of Mrs. Rosa Horowitz, who lives on Market between Front and Second streets, it was decided that her mind is badly affected. The investigation was held before Mr. W. N. Harris, deputy clerk of the superior court. The evidence was heard by a jury of twelve men, who returned a verdict as outlined. Mrs. Horowitz was sent to Morganton yesterday morning in charge of Constable W. B. Savage and Deputy Melvin Horns. This case is especially sad as the husband of the demented lady on August 18. It is stated that grief and anxiety, following his death, caused her mind to become affected. The couple operated a business on Market street, this city. There are four children. Isadore and Louis Horowitz, two sons, are left in charge of affairs. It is hoped that the treatment to be given Mrs. Horowitz will result in great benefit, and that she will be able to return in a short time completely cured. The affidavit as to Mrs. Horowitz's mental condition was made out by Dr. D. Loewenstein. It was stated that her disability manifested itself in acute melancholia and a disposition to give away

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FAVOR CLUSTER LIGHTS

Board of Aldermen May Back Patriotic Citizens

Proposition to Light West Martin Street and Also Fayetteville Street To Be Acted on Friday Night—To Open Auditorium With Exercises.

The proposition to place cluster lights on West Martin street, as announced in this paper yesterday, met with favor at the hands of the board of aldermen last night as did also the suggestion of Alderman J. Sherwood Upchurch for lighting Fayetteville street. Both propositions will come up for determination at a adjourned meeting next Friday night. It was conceded by the board that these lights would be a splendid improvement, but the question of raising the money had to be considered.

Another matter that will be brought forward at this time is the matter of three entertainments in the new auditorium and municipal building during fall week. It is proposed to have proper exercises when the magnificent building is turned over to the city. Mr. H. E. Litchford, president of the chamber of commerce, presented this matter as well as the lighting proposition for Martin street, and the board gave the municipal building commission and the building committee of the board of aldermen power to arrange for a celebration.

Mr. Dave M. King, chosen in caucus, was elected member of the board of audit and finance, vice Job P. Wyatt, deceased.

Speaking of the municipal building commission Mr. Albert L. Cox presented a statement showing that the furnishing would cost \$12,500. Bids have already been received and confirmation is only wanting to have the building ready by October 1. The board approved the reports of the commission and the money was ordered appropriated.

On petition of a number of persons in that locality, the Carolina Power & Light Company was ordered to take steps to abate the noise issuing from its power plant on the corner of Jones and West streets.

City Engineer Sewell asked for an appropriation of \$500 to build a pipe line on Fayetteville street for carrying off water after rains. The present sewer, which is too small as a storm sewer, has not been doing its work at all and as a result many basements on Fayetteville street have been flooded, causing damage. The money was ordered appropriated.

Sanitary districts will be created in the business section of the city, the resolution introduced at the last meeting being passed.

The matter of replacing in Pullen park the house of the keeper, which was destroyed by fire, was referred to the park committee with instructions to report back to the board. There was \$600 insurance on the house and it was estimated that \$1,000 additional will be required to replace the building.

Mr. Herbert E. Norris, in the interest of residents of the northern section of the city, appeared before the board for a light on North Person street. He showed that the light was needed and the light committee was instructed to have an arc placed.

Mr. James Barrow has finished his work and will cash in his check for \$50. No more will he slide up and down the streets of Raleigh with an ingenious arrangement for lassoing friendly, homeless and abandoned dogs. His work ended with August and he got 47, two of which were reclaimed, the others being sent to that bourne from which no ordinary dogs return.

FIDDLERS AND BALL HERE ON LABOR DAY

No extensive preparations have been made in Raleigh for the observance of Labor Day next Monday and the populace of this city will pursue the even tenor of their way in most cases. The state offices will be closed, the postoffice will observe Sunday hours and other institutions will not be open.

For amusement the public may attend the Fiddler's convention at the A. & M. College or the double-header ball game at the fair grounds.



Judge Harvey M. Trimble, of Illinois, who is the new head of the Grand Army of the Republic, Judge Trimble was unanimously elected Commander-in-Chief of the national encampment just ended at Rochester, N. Y.

WILL PROVE ALIBI

Not Believed Here That Murphy Is Man Wanted

Raleigh Man Not Believed to Be the Party Wanted in Albany, Ga.—Many Persons Will Testify as to His Whereabouts at Time of the Alleged Offense.

That W. J. Murphy, who is in the custody of the sheriff on a warrant from the authorities at Albany, Ga., could not have been in the Georgia town at the time the alleged gambling and larceny occurred, was the opinion of many people here today. Murphy was ordered held for alleged cases of gambling and larceny. It was said today that Murphy was in Raleigh about the time of the offense in Albany, and there will be many good people to swear that he is not the man wanted.

A written habemus corpus has been sworn out before Justice Hoke of the supreme court and the matter will be settled this afternoon, the hearing beginning at 2:30. Mr. J. W. Walters, Jr., collector of the city court of Albany, and Mr. James H. Poul, will appear for Georgia, while Col. J. C. L. Harris will represent Murphy.

Murphy has not been placed in jail, but has merely been in the custody of the sheriff until the matter is determined. The officers and many others here believe that the man will be released, as it seems clear that the arrest was a case of mistaken identity.

Nagel Opens Milwaukee Show.

Milwaukee, Wis., Sept. 2.—Secretary of Commerce and Labor Charles Nagel, as the official representative of President Taft, came to this city today to formally open Milwaukee's annual industrial exhibition. The exhibition, which will continue ten days, is being held in the auditorium and is intended to illustrate the industries and resources of the entire state of Wisconsin.

Ware's 150th Anniversary

Ware, Mass., Sept. 2.—Decorated as never before in her history the town of Ware today began a celebration of its one hundred and fiftieth anniversary. An attractive programme of festivities extending over three days has been prepared.

Ex-Queen Liliuokalani Is 73.

Honolulu, Sept. 2.—Former Queen Liliuokalani reached the age of 73 years today. In accordance with her custom the former Queen celebrated the anniversary by holding a large public reception.

It is as easy for a fool to give advice as it is for a wise man to pass it up.

AS TO MARKET HOUSE

Shall City Remodel or Sell Building?

An Election Called for October 21st To Vote on Two Propositions—Believed Old Building Will Be Ordered Torn Down by People.

Speaking vigorously in favor of his resolution for an election October 21 to vote on two propositions—Believed Old Building Will Be Ordered Torn Down by People.

There was no defense of the old building from anybody. No alderman raised his voice in protest against the words being uttered against an institution that was served the city long—too long, many people believe. The old germ-breeder, as the market house has been designated, has few friends any longer, and practically all the aldermen were of the opinion that the people would vote to sell the property and do away with a market entirely. Mr. Upchurch thought ninety percent of the people would favor selling the building and site.

Any rate the rules were suspended and an election called for October 21.

The meeting of the board was almost unanimous last night, a fact that many persons noted.

ROGER Q. MILLS DEAD.

Former Senator Mills, of Texas, Died Today, Age 79.

Corsicana, Tex., Sept. 2.—Former United States Senator from Texas, R. Q. Mills, died at his home here, age 79. He was ill several months.

American Educators in Norway.

Christiana, Norway, Sept. 2.—Several noted American educators, among them Dr. Leonard Stejneger of the Smithsonian Institution and Prof. P. W. Wolf of the University of Wisconsin, took part in the opening exercises today of the centennial celebration of the Royal Frederick University.

Wedding at Fort Ethan Allen.

Burlington, Vt., Sept. 2.—Fort Ethan Allen was the scene of a brilliant military wedding today, when Miss Charlotte Ellen Ryan, daughter of Capt. and Mrs. John Joseph Ryan, became the bride of Lieut. Joseph Cheate King of the Tenth Cavalry.

Typothetae Meeting.

Denver, Col., Sept. 2.—Owners and operators of printing and publishing concerns in many parts of the United States and Canada are arriving in Denver to attend the annual meeting of the United Typothetae of America. The meeting will begin its sessions today.

Louisville Aviation Meet.

Louisville, Ky., Sept. 2.—A three-day aviation meet began at Churchill Downs today under the auspices of the Louisville lodge of Elks. Among the participants are several of the aviators who were conspicuous in the recent Chicago tournament.

FURTHER DAMAGE AT CHARLESTON

Charleston, S. C., Sept. 2.—Continued heavy rainfall through last night further increased the damage wrought by Sunday's hurricane. The death list in and about Charleston stands at eighteen. It is probably the trades unions will call off the Labor Day holiday Monday to press repairs over the city.

Aged Preacher Dead.

Norfolk, Va., Sept. 2.—Rev. William P. Wright, aged sixty-nine years, for forty years a member of the Virginia Conference of the M. E. Church, South, died in a hospital here, following extended illness. He was copurport here for the American Bible Society. Interment will be in Petersburg, Va.



Harry Kemp, the young poet, whom Upton Sinclair, the famous author and social colonizer names in his suit for divorce which he says he is soon to institute against his wife.

IS HELD FOR MURDER

Wiley Austin Under Arrest In Norfolk

Officers Believe He Is Negro Who Killed Garfield Williams in Holly Springs Township in January—\$100 Reward For His Arrest.

Wiley Austin, who is alleged to have killed Garfield Williams in Holly Springs township some time in January, is believed to be under arrest at Norfolk, Va., and will tomorrow be brought to Wake county. Mr. J. J. Fiesant identified Austin as the murderer and will return with the prisoner in company with a Norfolk officer. Mr. Pleasant will claim \$100 reward if Austin is the right man.

A negro supposed to be Austin was arrested in Norfolk yesterday and the authorities in Raleigh were notified. Mr. T. C. Council, who saw Williams a few minutes after the murder, and Officer Barker, who knew Austin well, were called to the long distance phone to identify the prisoner in Norfolk, but the Norfolk officers did not want further identification.

The trouble occurred at an oyster supper at Williams' home on Mr. Council's place. Austin was drinking and swearing and Williams ordered him off the place. The men went out into the yard and after some argument Austin shot Williams.

The dead man was married and had a wife and one child. He was about 26 years old, was a steady and sober workman, and was well thought of by his employer and other good people of the community. Austin, who is about 29 years old, is said to have been a worthless negro and had been in trouble at other times.

AGED NEGRO ROBBED.

Twenty-Five Dollars in Money Taken From Old Man—Thinks Sister-in-Law Took His Money.

(Special to The Times.) Wilmington, Sept. 2.—D. W. Williams, an old colored man, who lives on South Eighth street, reported to Chief of Police John J. Fowler yesterday morning that he was robbed of \$25 last night. The old man was of the opinion that the money which was secured was taken by his sister-in-law, Mamie Edge, and he furnished information for a warrant for her arrest. The paper was issued during the morning and it is probable that the matter may come up for investigation at today's session of recorder's court.

Williams stated to Chief Fowler that he had \$50 in bills wrapped in a piece of paper. He said that he concealed the money between the two mattresses on his bed last night. This morning when he awoke he failed to remove the money before dressing. After he had gotten on his clothes he looked between the mattresses. In the meantime according to his contention his sister-in-law had made up the bed. Williams said that he searched thoroughly between the mattresses for the money. When he did not find it he glanced under the bed and saw on the floor, the paper in which he had wrapped the money. He opened the paper and discovered that all the money but a \$5 bill had been taken. The old man stated that as no one had been in the room but his sister-in-law, he felt confident she had taken the money. He therefore determined to issue a warrant against her and took this step as has been outlined above.

JUDGE BIGGS HAS RESIGNED

Resignation Had Not Been Received at Governor's Office At One O'clock This Afternoon

SEVERAL DESIRE PLACE

A Number of Candidates Said to Be in Race for Appointment to Position—Resignation is Expected at Governor's Office This Afternoon—Judge Biggs Held in High Esteem in Raleigh and Elsewhere.

The resignation of Judge J. Crawford Biggs, which was announced from Durham last night, had not been received at the governor's office at 1 o'clock this afternoon, though it will probably be received some time during the afternoon. The action of Judge Biggs, who is held in high esteem here, was a surprise.

No candidates for the place have been mentioned yet, it is thought. Governor Kitchin is out of the city and until he returns no appointment can be made. The Times-Durham correspondent today suggested several names that had been mentioned for the place.

To Succeed Judge Biggs.

Durham, Sept. 2.—Before Judge Biggs' resignation from the bench reached Governor Kitchin last night, the friends of Solicitor Sam Gattis of this, the ninth judicial district, of which Judge Biggs is the judge, and the friends of Ex-Senator H. W. Foushee were pressing their claims to other friends and these will be presented to Governor Kitchin in due time.

The resignation of Judge Biggs came as a great surprise to the people here. He declared in an interview with your correspondent yesterday afternoon that he had been moved almost entirely by family considerations, that he had now gone so far into the western counties that it means being away from his family from forty to forty-five weeks in the year.

To Resume Practice.

Judge Biggs has had an eminent able career at the bar and on the bench, going to the judgeship over Judge T. J. Shaw, of Greensboro in the election of 1906. Since that time he has served only five years and his administration has been of very marked ability. He is a fine lawyer and a great student. It is one of the luckiest things that he can come back to Durham, resume practice and connect himself with the Trinity law department as professor of law. That institution gains an able lawyer and one who will do its work perhaps better than any possible man.

Judge Biggs has practiced seven and a half years here and was instructor in the law school at the state university before coming here. He is a native of Granville county and went from there to the state university. He was valedictorian of his class at the university and a member of the great football team of that period, 1893-92-91. He is one of these fortunate men who do everything handsomely.

Durham's Choice.

At this time the successor to Judge Biggs cannot be guessed. The name of Judge R. H. Sykes of the recorder's court has been mentioned favorably, though one feels that if Durham presents a name, it will be that of Mr. Foushee.

HOLIDAY HOURS ON LABOR DAY IN CITY

Monday, September 4, Labor Day, being a legal holiday the usual hours for such days will be observed in the post office. The general delivery and stamp windows will be open from 8 a. m. to 10 a. m. The city carriers will make only the morning delivery. The rural carriers will not make any trip Monday.

Aunt and Niece in Double Wedding.

Washington, D. C., Sept. 2.—At a double wedding celebrated in the capital today Miss Susie Payne Trimble of this city became the bride of Judge Richard Tithill of Chicago, and at the same time her niece, Miss Ella Dunlap Trimble, of Birmingham, Ala., was united in marriage to the Rev. Roy Hartman of Oklahoma.