THE OYSTER FRAUDS.

Let Those Who Want Good Government Read the Report of the Democratic Lawyers Sent to Investigate the Cases.

Correspondence of The Progressive Farmer.

Hon. W. H. Worth, State Treasurer, Raleigh, N. C.:

DEAR SIR:—Having been employed to look into the now famous Pamlico and Carteret oyster cases, and having made a thorough personal examination thereof, we believe it is proper to submit to you as Treasurer of the State, a report, and we herewith hand you the same:

In order that the matter may be understood, we desire at the outset to briefly refer to the statutes of the State regulating the license, entry and grants of oyster grounds and the remedies provided for the recovery of oyster grounds, unlawfully licensed, entered or granted.

OYSTER LAWS.

Sec. 3390 of the Code authorizes inhabitants of the State to plant oyster beds, with certain exceptions, including natural oyster or clam beds.

Sec. 3391 of the Code authorizes the Clerk to grant license for such oyster beds.

Sec. 3392 of the Code authorizes the county commissioners to cause surveys to be made of said beds, and if it is found that the holder of any license had included within his stakes any natural oyster or clam beds, or failed to keep it properly staked, or had included more than ten acres, that he should forfeit his license.

Resolution of the General Assembly, laws of 1885, p. 689, provided that the State Board of Agriculture should cause a survey to made of the natural oyster beds and private oyster gardens of the State and make a repart to the next session of the General Assembly of North Carolina, and the Governor of the State was requested to ask the Federal Government to detail some person of the public service to make the survey and examination.

Chapter 119 of the laws of 1886 provided that the State should exercise exclusive jurisdiction over shell fisheries in the State south of Roanoke and Croatan sound and north of Core sound, and established the following boundaries: Southern boundary line, of Hyde county, shall extend to the middle of Ocracoke Inlet to the Royal Shoal lighthouse, thence across Pamlico sound and with the middle line of the Pamlico and Pungo rivers to the dividing line between the counties of Hyde and Beaufort, and the northern boundary line of Carteret county shall extend from the middle of Ocracoke Inlet to the Royal Shoal lighthouse, thence to the Brant Island Shoal light house, thence across Pamlico sound to a point midway between Maw Point and Point of Marsh, and thence with the middle line of Neuse river to the dividing line between the county of Carteret and Craven or Pamlico, and that portion of Pamlico sound and the Neuse and Pamlico river not within the boundaries of Dare, Hyde or Carteret counties and not a part of any other county shall be in the county of Pamlico, and for the purpose of this Act and in the execution of the requirements thereof the shore line as now defined by the United States coast and geodetic surveys shall be accepted as correct. The Act further provides for the election of the Shell Fish Commission and prescribes their duties. It also provides for the entry of such oyster grounds within the State survey as are not natural oyster beds, and provides for the issuing of grants thereto by the Secretary of State.

Chapter 281 of the laws of 1887 provides that the commissioners of the county of Carteret may designate and define the natural oyster and clam beds for said county and may make such rules as may be necessary for the protection of said natural oyster beds.

Chapter 127 of the laws of 1889 provides that the board of commissioners of shell fisheries created by the laws of 1877 be abolished from and after the first day of March, 1889, and all maps and records then in the custody of said board shall be transferred to the Secretary of State, who shall thereafter be charged with the requirements of said section.

Chapter 179 of the laws of 1889 provided that any lawful citizen of the State could purchase land theretofore entered as oyster land or enter any grounds that were subject to entry in any of the waters of Pamlico sound or in the creeks or bays tributary thereof in such quantity as may be desired for the immediate cultivation of shell fish, that said lands should be planted in not less than 500 bushels of oysters per acre before January 1st, 1891, and should forfeit the lands if not so plated.

Chapter 338 of the laws of 1891 provided for the appointment of a Chief Oyster Commissioner and provided for reports to be made by him to the Board of Shell Fish Commissioners, and further provides that the Chief Commissioner and the two associate commissioners shall constitute a board of shell fish commissioners within this State.

Chapter 287 of the laws of 1893 undertook to amend section 3991 of the Code. There is no such section in the Code. Evidently the legislature was striking at section 3391. This amendment provides that the Clerk might in his discretion grant licenses for oyster bed to any inhabitants of the State as provided therein, and further provided that it should be the duty of the Solicitor of the Judicial district in which the county was situated wherein the license, entry or grant for any oyster bed had been made, upon an affidavit filed with him sworn to and subscribed by five inhabitants of said county, stating that such license, entry or grant included a natural oyster bed, forthwith to institute an action in the Superior Court of such county in the name of the State of North Carolina upon the relation of such person to vacate such license, entry or grant and to prosecute the same to judgment. The act further provides that such action must be begun within 12 months from the fourth day of March, 1893.

Chapter 160 of the laws of 1895 repeals chapter 388, evidently meaning 388 of the laws of 1891, and chapter 284 and 287 of the laws of 1893.

Under this act of 1887 it will be observed the license issued by the Clerk of the Court was abolished as to oyster bottoms lying in Pamlico sound, and entry and grant as of public land substituted.

No entries, however, were made until the year 1891, when a syndicate began operations. A survey had been made designating certain portions as natural oyster bottoms and certain other portions as not natural oyster bottoms. Professional oystermen declare that much of the most valuable oyster bottoms were put in that portion declared not natural oyster bottoms. This syndicate began operations by getting promiscuous people to make entries for the full amount allowed each by law. The syndicate advancing the fees for entry and taking an assignment.

By this means much of the better oyster bottoms began to be taken up, and the professional oysterman who depended for his living upon these very beds became frightened and then began to lay entries for himself, his wife, his sons, daughters, and babies. The syndicate had laid entries in the names of farmers, lawyers, teachers merchants, anybody, rich or poor, white or black, from various counties of Pamlico, Craven, Beaufort, Carteret, Lenoir, Jones, and wherever they could get the assignment.

Between the two classes six hundred and ninety five entries were laid in the year 1891. Some of them said to be in the names of parties dead at the time. None were made after the year 1891. By law these entries must have been paid for and grants obtained on or before Dec. 31st, 1893. Some lawyers contending before Dec. 31st, 1892. Depending upon construction of Code 2766. No grant was ever issued on any of them.

Many oystermen told us that in no case was an entry made, on bottoms not already carrying a natural growth of oysters. A great clamor arose, charges were made of a fraudulent collusion between the surveyors and the syndicate. Those who had failed to get in entries were urgent for relief. The General Assembly of 1893 passed the act chapter 287 defining natural oyster beds and directing suits to set aside entries on such bottoms. It seems committees were appointed from the counties of Pamlico and Carteret to make the necessary affidavits. Such a committee of five met in Bayboro by appointment on Oct. 6th, 1893, and before Festus Miller, C. S. C, made an affidavit which was drawn by said Clerk as follows:

State of North Carolina, Pamlico Co.,
State and Solicitor of First Judicial district
vs.
F. P. Gates, W. T. Caho and others.
} Affidavit.

Jno. F. Slade, D. G. Saddler, J. C. Martin and Geo. Daniels, all of the county of Pamlico and State of North Carolina, personally appeared before me and makes oath that according to entry book of Pamlico county in which the oyster entries are recorded, that there are six hundred and ninety-five entries recorded in said book and that they are well acquainted with the bottoms on which said entries are laid, and that the entries are all made on bottoms that are public oyster bottoms according to section 1 chapter 287 laws of 1893

Sworn to October 6th, 1893, before Festus Miller, C. S. C.

(Signed as above)

This affidavit appears to have been sent to J. H. Blount, Solicitor, and was returned by him with a letter to the Clerk, stating that the affidavit was hardly sufficient, but he thought that the Clerk could ascertain from the records what was meant, and directed him to issue summons giving manner of title.

The dockets in the Clerk's office have notes of issuance of summons dates Oct. 31st to Nov. 4th, inclusive, in six hundred and ninety-five cases. Of these summons seventy two were returned to the fall term 1893, served by the Sheriff of Pamlico county, Thos. Campen, and fifty seven by sheriffs of other counties. Other sheriffs returned sixteen "Not in county," We find in the Clerk's office on file three addressed to Sheriff Baltimore, Md. Two to the Sheriff of Craven county, and three hundred and twenty-seven to Sheriff of Pamlico county, upon which is endorsed no return of any sheriff whatever or any date of receipt or acknowledgement of receipt. This accounts for four hundred and seventy-seven. And leaves two hundred and eighteen unaccounted for. The dockets do not show any returns therefor, nor do they in any case show from what county the summons was issued. It is claimed that many if not all of these are to be accounted for by the fact that the Sheriff of Craven county made no returns for a large number sent to him. This Sheriff explains that he was not bound to accept or serve them without his fee, that he knew not how many were tendered him and he left them lying around his office. The minute nor other docket nor records of the court nor cases show any order for alias summons in any of these cases, so far as we were able to find.

Alias summons were issued, however, to the Sheriff of Pamlico county dated April, 1894, and returned by him, served in three hundred and two cases, of which eighty three purport to be served on April 20th, 1894, and seventy one on May 3rd, 1894, forty two "Not in county" and eight dead. We found no record of other aliases than these, except a bill of cost charging for about four hundred and thirty eight aliases.

A peculiarity of the situation is that one of the signers of the affidavit was made the defendant as well as all of his children, minors living with him. No complaints were filed. We are informed that the syndicate employed lawyers to defend their entries, and the other defendants employed none. Similar actions had been begun in Hyde county. One State vs. Spencer 114 N. C. 770 was made a test case by agreement and tried at Hyde court fall 1892 and on appeal to Supreme Court Feb. term, 1894. It was stated that this was to be applicable as a test case to Pamlico as well as Hyde county cases; both being brought by the same solicitor. The effect of this decision was to decide the survey conclusive and to make all these actions hopeless.

There was absolutely no reason to issue any further process or incur further cost. Besides, the entries had all lapsed on Dec. 31st, 1893, and were null and void. The decision of the Supreme Court had been filed Feb. 27th, 1894, six weeks before the issuance of the aliases. Further proceedings could lead to only one result, enormous bills of cost to officers. At time for spring term, 1894, Judge Armfield, who was riding the First district, was sick and no court was held for Pamlico county. At fall term, 1894, by practical consent of parties before court, non suits having been taken in all cases, judgments were rendered taxing the cost against the county of Pamlico. The county appealed, and by agreement one case was brought up as a test of the whole, reported in the 118 N. C. 9 State vs. Simmons. The Supreme Court held that the county was not liable At spring term 1896 Judge Robinson rendered judgment taxing the State with the cost, but added "How the judgment will be satisfied is a question not now before us."

Blount vs. Simmons 120 N. C. 19 is a rehearing of this case. The court reaffirmed the opinion above but passed upon certain items of cost and declared them illegal.

At fall term 1897 of Pamlico Superior Court an order was entered consolidating all cases and re taxing the bill of cost, adjudging affixed amount in favor of the Clerk of the Superior Court, Festus Miller, and a certain amount in favor of Thos. Campen, former Sheriff, the aggregate amounting to something over $4,000. The items disallowed by the Supreme Court in the last named opinion were left out of the bill, reducing the same several hundred dollars below the amounts for which upon a sworn bill and statement by Festus Miller Clerk of Superior Court, a warrant had been procured from the State Auditor for forty-eight hundred, fifty-one dollars and forty cents Dec. 1st, 1896. For reasons we give below this bill of cost we think erroneous and excessive, and while it may be too late in a judicial proceeding by appeal to correct the same, it is not too late for the legislature.

We will consider first the 332 summons found in the office of the Clerk. A summons is not issued and the Clerk is not entitled to any fee therefor until it is delivered to the sheriff or some one for him. And the sheriff is required to note on the back of it the date of its receipt. This being so the record would show that these 332 summons were never issued and actions in those cases never begun. It is claimed, however, that they were handed to the sheriff and by him given back. The Clerk's acceptance of them without any return from the sheriff would be a virtual withdrawal of process, and would not change the conclusion above. In many of these cases what purports to be an alias summons in the bill of cost was issued in April, 1894, but by the terms of the act no action could be begun later than March 3rd, 1894, and these aliases under the law could not constitute a legally instituted action, from which we must conclude that no liability attaches against the State as to any of these 332 actions which had no legal existence.

As to other aliases, if they were issued, there is nothing to show that they were other than gratuitous and officious. They could accomplish no purpose at the time issued, and we think it an outrage to compel the State to pay therefor.

There is charged in each case $1 80 for continuances, six at 30 cents each. We do not see that the Clerk was entitled to this fee in any case at the return term fall of 1893. No court was held in spring 1894. The only purpose of the case upon the docket at any subsequent term was to await the opinion of the Supreme Court and render judgment accordingly. None of these, in our opinion, constitute continuances for which fee may be charged, therefore we think the entire sum charged for continuances, (over $1200), is illegal and unjustifiable.

There are other items in the bill of cost as finally allowed which we do not think would have been allowed by the court with the facts fully before them. For instance, in each bill of cost is allowed from thirty to forty cents for filing papers. Ten cents for each separate paper constituting the judgment roll, whereas, the fee fixed in the Code for filing "papers" is ten cents, and not ten cents for filing each paper.

As to sheriff's fees the first bill of cost presented made a charge of sixty cents for service, regardless whether or not any service had been returned. We are glad to say in the last judgment this has been corrected to charge only where service was returned. these charges, however, include some services returned as made on Sundays, which service is void upon its face by law.

We learn that many defendants were minors, many of them under fourteen years of age. We inquired of many persons in various parts of the county and were informed that in no case were copies of summons delivered to said minors their parents or guardians, and such service was not legal, and had these matters been called to the attention of the court no fee would have been allowed the sheriff for such service.

In addition to these facts, quite a large number of those returned served have made affidavit that they never were served in any manner. And it is reported to us that even in those cases where defendants were adults, the sheriff did attempt service he did not read the summons to the defendants in many cases, but merely stated to the defendant that he had such summons.

Bills of cost presented in the cases where summons was directed to sheriff of Baltimore aggregated $23 70 as appears in the bills of cost presented for payment upon which the warrant was obtained from the Auditor. These warrants are still held by the claimants, we are informed.

CARTERET COUNTY CASES.

In Carteret county three affidavits were filed with the Solicitor of the district, alleging that 104 persons named in said affidavit, had procured licenses for oyster gardens covered by natural oyster beds, and actions were begun on these under the laws of 1893. In Carteret county a great number of alias summonses were issued, and as far as the records show, without authority.

In 70 of these cases which do not appear on summons docket until spring term 1894, and the original summoses bear no evidence of ever having gone into the hands of the sheriff at any time, in fact, they appear to have been written out by the Clerk and placed in the files of the papers—never having been issued at all. These 70 summonses, with two exceptions, were all issued on the 5th day of October, 1893 returnable to fall term, 1893 These papers are charged for in the bills of cost as original summonses at one dollar each. In many of the cases there were as many as five alias summonses issued, and as far as the records show, without authority, and several instances where the sheriff had returned the defendants as "dead," the Clerk continued to issue alias summonses. As an illustration of this we take the case of Jno. Williams: First summons, October 5th, 1893; no evidence that this ever went into the hands of the sheriff. Alias November 22, 1893; returned, "not to be found in the county." Alias June 9, 1894; returned "dead." Alias, Jan. 1895; returned, "dead." Alias, Aug. 6th, 1896; returned, "dead." In this case the State is charged with $5 for summonses.

It will appear from an examination of the statutes above, that these cases from Carteret had nothing in common with the case of State vs, Spencer, from Hyde county, or the Pamlico county cases, the Carteret cases having been brought to declare void certain license granted by the Clerk, in waters outside of the oyster survey, while the other was brought to recover oyster lands within the oyster survey; the one in Hyde, State vs. Spencer, to declare void a grant, theretofore issued; those of Pamlico county to avoid certain entries. It will be noticed that quite a large number of aliases referred to above were issued after the Act under which the actions were brought, had been repealed by the legislature of 1895. By actual count 52 alias summonses were issued after the repeal of said statute, and the sum of $52 appears as a charge against the State in said bills of cost. The sheriff served 23 of these aliases, for which charges are made, after the said act had been repealed, the fees charged amounting to $13 80.

There was not a single answer filed in the Carteret cases, and there is no reason that we can see why judgment by default could not have been had. There was only one order made as to the time to file answers and that was a general order at fall term, 1894 Sundry witnesses were summonsed, to appear in the cases, though no answer was filed in any of them, and it appears that the cost for these witnesses were charged up in the case of W. O Lupton, who, by the way, was one of the parties who signed the affidavit upon which most of the actions were commenced including one against himself, Putting all these things together, it can be easily seen how these immense bills of cost have been charged against the State.

The original summonses and a part of the aliases were issued by Jno. D. Davis, Clerk, and a part of the alias summonses by L. A. Garner, the present Clerk. The aliases issued in the cases where the parties had been returned as "dead," were issued by Mr. Garner. It seems that shortly before the term of court at which the judgment of non suit was taken, alias summonses were issued indiscriminately in all the cases in which service had not been made, whether the return theretofore made was "dead," or otherwise, and as far as the records show the issuing of alias summons was purely discretionary with the Clerk, and they were issued to nearly every term of the court regardless of the returns made on previous issues.

A number of people in the county state that no summonses were read to them in the cases where they are returned as "served," and some state that they never heard of the suits, that they had no idea of resisting the withdrawal of their licenses, that they were anxious for all licenses to be revoked, so that they could go back to their accustomed business of taking oysters from the waters of Core sound and elsewhere.

It seems that a nonsuit was taken in all these cases on account of the decision of the Supreme Court in the case of State vs. Spencer, when, as we have before stated, there was nothing in common in the cases.

In these cases the Clerk charges for from five to six continuances in each, amounting in all to about $180. In order to get this amount, the Clerk charges for a continuance at the appearance term of the court, and includes in said charges a continuance on the summonses which are referred to as apparently never issued, and which do not, by the way, appear on the summons docket of said court until spring term, 1894, of said court.

In conclusion, we submit that the foregoing circumstances, appearing from the records, together with the facts gathered by us from the citizens of said counties and the affidavits made, and referred to by us herein, point so strongly to fraudulent efforts to stuff these bills of cost presented to the State for payment, and upon which the warrants were obtained, that you were perfectly justifiable in refusing payment, and in recommending the legislature of North Carolina through proper committees to make a thorough investigation.

Very respectfully,
W. C. DOUGLASS,
W. D. MCIVER,
Attorneys for State.

The following letter from a man who requested us to stop his paper when his subscription expired six weeks ago explains itself: Editors THE PROGRESSIVE FARMER:—Enclosed please find $1 for which please send me THE PROGRESSIVE FARMER. I can't do without it. Have tried to do so six weeks, but find I can't "make it."—Geo. F. Frick, Garfield, N. C.

"CHARGES NOT SUSTAINED."

The famous Clark Kilgo trial is ended and results in a complete vindication of Dr. Kilgo, president of Trinity College. After brief deliberation the board of trustees of the college decided that neither the charge nor a single one of the specifications was sustained.

According to the Raleigh Post correspondent the charge made by Clark was:

That he (Dr. Kilgo) is unfit president of Trinity College.

SPECIFICATIONS.

1. That Dr. Kilgo's reputation South Carolina was that of a wire puller of the ward politician type and his performances in this State have justified his reputation.

2 That he was in Tennessee and was known there as a scrub politician.

3 Sycophancy to Mr. Washington Duke in that he (Dr. Kilgo) received a procession to Mr. Duke's home and extolled him as the greatest man the State ever produced.

4 That he has received personal gratuity from Mr. Duke.

5. That Dr. Kilgo intended to prevent Judge Clark from having an opportunity to produce evidence before former meeting of the trustees.

The witnesses for the prosecution were: B. C. Beckworth, R. B. Boyd, T. J. Gattis, Z P. Council and depositions introduced from T. C. Love, Mr. Jennings, of Spartanburg, S. C., and Dr. T. B Kingsbury. The witnesses for the defence were Professors R. L. Flowers, W. H. Pegram, A. Merritt, J. S. Bassett, W. I. Crawford, J. F. Bivins, Rev. James W. Kilgo, Rev. W. L Grissom, Dr Dred Peacock and some others. Depositions were introduced from Revs. J. O. Wilson, South Carolina; H. F. Chreitzberg, B. Turrentine, of Charlotte, N. C.; H. J. Bass, Durham N. C; Governor Ellerbee, Senator McLaurin and Bishop Duncan.

The following trustees were present: Rev. A. P. Tyer, Mr J. H. Southgate, Mr. B N. Duke, Hon. Walter Clark, Rev. J. N. Cole, Rev. F. A. Bivins, Rev. G. A Oglesby, Mr. V. Ballard, Mr. E. J. Parrish, Mr. W. H. Branson, Mr. W. R. Odell, Colonel G. W. Flowers, Rev. J. R. Brooks, D. D, Hon. J Montgomery, Rev. S. B. Turrentine, Dr. W. S. Creasy, Professor O. Carr, Rev. N. M. Jurney, Rev. T. Ivey, D. D, Rev. J B. Hurley, Rev. W. C. Wilson, Dr. Dred Peacock, Rev. A. H Stokes.

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Happy is he who wisely knows
To use the gifts that heaven bestows
Or if it please the powers divine
Can suffer want and not repine.
—Dean Swift
