

## Solicitor Abernethy Declares That Judge Carter Is In Wrong

**Solicitor for This District Defends Himself and Denies Allegations of Judge Carter Which Reflect Upon His Character and Integrity. To the People of the State He Sends Out A Message Fully Explaining the Affair in Which He Was Adjudged In Contempt and the Following Incidents Which Have Tended to Cast A Reflection Upon Him—Files Numerous Affidavits.**

As a sequel to the filing of a memorandum by Judge Carter on the court records yesterday morning in which he heartily condemned Solicitor Charles L. Abernethy of this city for his conduct of the case of the State vs. James H. Baugham of Washington in which the defendant is accused of murder, Solicitor Abernethy has given to the people of the State a statement in which he sets forth his side of the matter, showing that he was acting in a manner which he thought was exactly right and in which he states that Judge Carter has done him a great injustice in the manner in which he has acted toward him.

The statement, which is of interest all over North Carolina, together with several affidavits of interest, follows:

### What The Solicitor Says:

#### To The People of the State:

On Monday last when the case of the State vs. Baugham was reached, when the criminal docket was being called in Craven Superior Court, the Honorable Frank Carter, Judge Presiding, adjudged me in contempt of Court, fined me \$50.00 with the statement to the Sheriff that I should be treated like any other criminal, and unless the fine was paid by three o'clock—it then being about 11:30 a. m., that I should be committed to the common jail, and that he would appoint someone else to prosecute the criminal docket. On Wednesday following I gave to the press a statement of the facts referring to the alleged contempt, and on Thursday I caused to be published a copy of the note which I had directed to the Court, and in which I took the position that I had been fined for contempt, and so far as I was concerned, it was at an end.

#### Tells Of The Affair.

I do not deem it now necessary to reiterate in detail the facts which I have heretofore given to the public, but after the occurrence in the Court this morning I think it proper to again call the attention of the public to the matter. The trial of the docket having been finished, the court met again this Saturday at ten o'clock. A few minutes after ten, the Court having inquired if there was other business before the Court, indicated its intention to adjourn court and leave the bench, but before doing so, took from his pocket a type written memorandum, and ordered the clerk to enter it upon the minutes in the case of the State vs. Baugham in the Minute Docket. Thereupon, my counsel requested of the Court the information, if the memorandum contained any reference to myself, either personally or officially, and if so, to permit an inspection of the memorandum to be made by me and my counsel before ordering it to be entered upon the minutes. Thereupon his Honor, inquired of counsel whether or not, the Court didn't have the right to have such entries made in a case pending in his court, as seemed proper to the Court, to which counsel replied, "that we made no objection to his Honor filing orders that he had a right to file, but if the Court please, if the memorandum which the Court was filing in any way concerned the Solicitor and the matter which had been heard heretofore by the Court, then we think we should have the right to inspect the paper before its being spread upon the minutes"; then the Court said that the Clerk would permit counsel to inspect the paper, and adjourned court until twelve, mid-day, to permit my counsel to examine the paper, instructing the clerk in the meanwhile to record the same. Upon examination by my counsel and myself of the memorandum filed by the Court, it was found that the paper contained a serious reflection upon my personal and official character. Among other things, the Court found as a conclusion, without a hearing, entirely ex parte, and without notice of any kind to me, and having already or-

dered it to be recorded in the minute docket, that my refusal to report as requested constituted a moral, if not a legal delinquency, which the Court "heartily condemns," the request referred to by the Court having been made after the Court had already adjudged me guilty of contempt of Court, had committed me to the custody of the Sheriff, to be treated as any other prisoner, and after I had already been adjudged in contempt by the Court and paid the fine under protest. The Court having directed the memorandum containing the reflection upon me to be recorded during the recess of the court, I had prepared, after consultation with my counsel for the purpose of submitting to the Court when it should re-convene at twelve, mid-day, the following protest:

#### Abernethy's Protest

North Carolina,  
Craven County,  
In the Superior Court,  
To the Hon. Frank Carter, Judge Presiding:

When your Honor was about to leave the bench this morning, having announced that the Court was about to adjourn and having inquired if there was any other business, your Honor delivered to the Clerk a memorandum in the case of State vs. Baugham, containing among other things, serious reflections against me as an officer of this court, and against my personal character, and ordered the Clerk immediately to spread the same upon the minutes of the court.

Immediately upon the announcement of this fact by your Honor from the bench, my counsel requested the privilege of reading the paper, provided it made any reference to me before it should be made a part of the minutes of the court. Your Honor thereupon authorized the Clerk to permit my counsel to inspect the paper and adjourned the court until 12 o'clock mid-day, directing the Clerk in the meanwhile to spread the paper upon the minutes of the court. During the interval, the document having been read by my counsel in my presence and consideration having been made thereof by my counsel and myself, I now desire to solemnly protest against the said memorandum in so far as any personal or official reference to me is concerned, and if the paper has not already been spread upon the minutes, I now enter my solemn protest against its entry, and in the event it has been spread upon the minutes, nevertheless, to enter this my solemn protest, for the following reasons:

#### The Reasons

**First**—Because there is no matter pending before your Honor which would authorize your Honor to find any facts whatever concerning me personally or officially.

**Second**—That there is no legal authority vested in your Honor to make and cause to be spread upon the minutes of this court alleged facts which reflect upon me either personally or officially.

**Third**—That the references made by your Honor in the paper writing, of the history of the case of State vs. Baugham at the present term of the court are not before the Court, your Honor having taken cognizance of the same heretofore, and held me in contempt and pronounced judgment against me, which judgment under protest, has been complied with.

**Fourth**—That the references to me in said paper writing containing as it does intimations and reflections against me as an individual and as an officer of the State, are unwarranted, unjustified and unauthorized.

**Fifth**—Granting to your Honor the right, both as an individual and as a court, to draw your own conclusions, and with all respect due to the Court, nevertheless, recognizing my responsibility to the people of the State, and will full consciousness of my integrity, and my proper conduct of my office, I am constrained, of necessity, to declare the conclusions of your Honor, in so far as they refer to me personally and officially, are unjustified and unwarranted, and I protest that your Honor has no right to cause the same to be entered upon the records of the Court.

Respectfully submitted,  
**CHARLES L. ABERNETHY,**  
This 13th of Feb. 1915.

#### Read Protest.

At twelve o'clock the court re-convened, and then in person I read the protest above recited, and asked that the same be entered upon the minutes of the court, the Clerk having at that time, recorded a portion of it, already, or all of the memorandum of the Judge, whereupon the Court made a supplemental memorandum as follows:

North Carolina, Superior Court,

Craven County, February Criminal Term, 1915.

State vs. James H. Baugham. Supplement memorandum and order.

Upon the call of the docket on Monday, the first day of the Criminal week of the present term of court, instituted at inquiry as to the status of the record in the above entitled case with reference to the date and manner of its institution and the former continuances thereof, and as to the reasons of the Solicitor for consenting out of term to the further continuance of said case at the present term. Said inquiry was defeated for the time being by the disorderly and contemptuous behavior of the Solicitor.

The Court held said inquiry in abeyance for two whole days in the hope that the Solicitor would come to a realization of his duty in the premises and concede the right of the Court to be informed upon a matter so vitally affecting the administration of public justice, and upon Wednesday afternoon made the request in writing for the information aforesaid, which appears upon the minutes of the court for that date.

On the opening of the court on Thursday morning the Solicitor handed to the court the categorical refusal to furnish the information asked for which appears upon the minutes of that day's session.

The Court has allowed the Solicitor two whole days in which to reconsider his refusal aforesaid and to perform his manifest duty in the premises. The court convened at 10 o'clock a. m., on Saturday, the last day of the court, and after disposing of all the unfinished business of the term and after repeated inquiries of the Solicitor and all the counsel present in Court as to whether there was any other matter upon which they wished to be heard, making suitable pauses after each of said inquiries, and hearing no response the Court handed to the clerk a written memorandum and order entitled in the above case remitting to the due consideration of the Judge regularly riding the Fifth Judicial District all questions involved in the aforesaid inquiry and the considerations moving the Court to such action.

The Solicitor makes written protest against the entry upon the minutes of the memorandum and order aforesaid.

The Court directs that said protest be entered upon the minutes of the court together with this supplemental memorandum and order. (Signed) FRANK CARTER, Judge Presiding.

ordering the protest recorded. Then, for the first time, the Court read in the hearing of the people there assembled the memorandum or order which he had ordered the clerk to enter upon the minute docket, without notice to me of its purport, or contents, containing, as I state, serious reflections upon me as quoted heretofore in this statement.

#### Not Disrespectful.

I desire solemnly to affirm that at no time on Monday during the trouble between Judge Carter and myself was I disrespectful to the Court, either in word or manner, and was only endeavoring to make an explanation on account of the remarks that the Court had made relative to the particular case of State vs. Baugham, and that the continuance was procured as the result of undue influence. I further desire to solemnly assert that at no time during the whole controversy between Judge Carter and myself did the Judge ever state that he would give me any further time to be heard relative to the reasons for continuing the Baugham case, though I had informed him that the continuance had been made subject to his approval, and also stated to the Court that I stood ready then and there to notify counsel for the defendant that I would take the case up Monday of the following week for trial, if the Court so desired, and thereupon the Court ordered the case continued after he had adjudged me in contempt; as aforesaid, and the case now stands continued, as appears from the minute docket of Monday.

#### Submits Affidavit.

I am submitting herewith affidavit of Mr. Angus D. McLean, counsel for defendant, at whose instance the continuances were procured. It has been my desire all along to try the case at the present time, and endeavor to so state to the Court on Monday, but was not permitted to do so. Insofar as the defendant not having been arraigned is concerned, I will say that Judge Peebles was presiding at the term of court at which time indictment was found, and he fixed the bond for the defendant, at the same time stating that the defendant could not be held for any higher crime than manslaughter and for that reason the defendant was not arraigned for murder. At the October term, Judge Peebles was also presiding and continued it, and the defendant was permitted to go under the same bond.

I am also submitting other affidavits of several reputable and well known

citizens of the city of New Bern, who were present at the time said saw and heard what occurred at the time of the alleged contempt, and I will say that I am able to furnish substantially the same affidavits from very many other citizens of New Bern whose truthfulness will not be questioned.

#### Deemed Matter Closed.

When Judge Carter adjudged me guilty of contempt, imposed the fine, and committed me to the custody of the Sheriff until the fine was paid, followed as it was by my payment of the fine, I deemed the matter closed, insofar as further hearings before him were concerned, but the Judge having entered judgment against me when I was endeavoring to be heard, I have not deemed it necessary to again submit any phase of the matter to his further consideration, particularly as the matter had been, as I construe it, ended by my performance of the judgment of the Court, and but for the fact that the matter was again reopened by the Judge by placing on the minutes of the court matter reflecting upon my personal and official character, I should not now again be calling the matter to the attention of the public. I desire to say that I yield to no one in the respect entertained for the courts of the State and for the judiciary, but I, too, am an officer of the State, and as it is important that public respect should be maintained for the judiciary, it is likewise important that the people in this district should continue to feel that the prosecution of crime has been entrusted to honest hands, and when the Court, without cause, as I feel, publicly suggested, in the case of State vs. Baugham, that it had been continued for reasons other than those which should prompt a faithful officer, I felt that it was only due the public, and myself as the representative of the public, before the crowded court room that had heard the suggestion, to make a full and candid statement of the case that prompted me to agree, with the Court's consent, that the case might stand continued for the term. It was my desire to make this explanation, but I was denied the opportunity to make it, which desire caused the Court to hold me in contempt, impose a fine and commit me to prison.

At no time, either by word or manner, did I treat the Court with contempt. I was simply and earnestly requesting the Court to hear me, when I would state to the Court the facts which had moved me, at the instance of the defendant's counsel, and with the consent of counsel for the private prosecution, Mr. R. A. Nunn to continue the case, and there can be no doubt that, had the Court given me its hearing, the explanation which I would have made to him at the time would have appealed to him as just grounds for a continuance.

#### CHARLES L. ABERNETHY.

#### Files Affidavits.

In support of Solicitor Abernethy's contentions, he has filed the following affidavits for publication:

#### L. I. Moore's Statement

North Carolina,  
Craven County.  
L. I. Moore, of the firm of Moore & Dunn, submits the following statement concerning the matter of State vs. Baugham pending in Craven County.

My firm, together with Mr. McLean of Washington, represent the defendant in this criminal action, and in a civil action growing out of the same matter, as fully set out in the affidavit of Mr. McLean.

At the October term of Craven Superior Court, on the call of the docket, by his Honor R. B. Peebles, Judge, motion was made by Mr. William Dunn, Jr., to continue this case on account of the conflict of the Court here and at Beaufort County, necessitating the presence in Washington of Mr. McLean and Mr. Harry McMullan, brother-in-law of the defendant and a necessary witness for the defendant.

His Honor then asked for some statement of the facts pertaining to the alleged homicide looking toward the fixing of a bond. The Solicitor then stated the contentions of the State, but his Honor replied to the Solicitor that he doubted under the circumstances whether the defendant could be convicted of any grade of homicide, but certainly no greater offense than manslaughter should be contended for. The Solicitor in open court stated that he would not prosecute defendant for a greater offense than manslaughter. The Judge granted the continuance and prescribed the bond, and bond was the same afternoon prepared and presented to his honor by Mr. William Dunn, Jr., with the defendant in person, and his Honor directed that the bond should be filed with the clerk, which was done by Mr. Dunn.

Mr. Dunn came immediately to the office from the court house and related to me what had transpired in court, and subsequently upon the controversy arising at this term of court concerning this case, he reiterated the statement then made by Mr. Dunn.

On account of serious illness Mr. Dunn was forced last night to go to Richmond to a hospital, and this

## FRIDAY "ARBOR DAY" AT FARM LIFE SCHOOL

An Appropriate Program Was Carried Out There

### MANY ATTENDED

Teachers and Pupils Participated In The Exercises

Vanceboro, Feb. 13.—The teachers and students of the Farm Life School observed Friday as Arbor Day. A number of trees, shrubs and flowers were planted. The eighth grade girls in the Domestic Science Department served dinner to teachers and students and all had an enjoyable time.

Mr. Covington, the Methodist Minister, was the school's guest on this occasion.

This afternoon the Seaman Knapp Literary Society held its regular weekly meeting. The following was the program:

"Some Benefits of A Good Literary Society"—Fred Whitehurst.

"Some Old Towns in North Carolina"—Harriet Brown.

Recitation—Lena Ewell.

"A Selected Reading"—Edith Harvey.

Debate: Resolved that North Carolina should have a state wide dog tax for the benefit of the public schools.

Misses Helen McLawhorn and Nova Warren upheld the victorious affirmative and Miss Margaret Brown and Miss Celia Bonner the negative.

A statement is made by me upon information given at the time as to what had occurred, and reiterated to me during this week.

It was understood at the time defendant was present at court, at the October term, the announcement being made at that time, that no greater offense than manslaughter would be contended for by the State, and that an arraignment was unnecessary and unneeded for under all the circumstances then appearing, and thereby the defendant waived the right to require an arraignment and the actual plea of not guilty, his plea of not guilty being entered, and he never at any time proposed or intended for himself or by his counsel, to make any technical plea to the bill of indictment, but intended and desired to contest the charge upon its merits, insisting upon his innocence of any crime.

#### L. I. Moore

#### A. D. McLean.

North Carolina,  
Craven County.

A. D. McLean, being duly sworn, says: My firm, with Messrs Moore & Dunn, are attorneys for the defendant in the case of State vs. James H. Baugham, a young boy indicted for criminal homicide on account of an automobile accident. He and his mother (his father having died some years ago) are also used in a civil action for damages on the same account by a relative of the dead man, although a settlement satisfactory to him was made before his death, and thereafter his widow and executrix ratified this settlement under oath, and as I am reliably informed denounced the criminal prosecution as unjust and unwarranted. Both cases are pending in Craven County, and as I am also informed the attorney for the private prosecution in the criminal case is at the same time the attorney for the plaintiff in the damage suit. It was hoped and expected by young Baugham and his mother that the criminal charge against the boy heard and disposed of, and also because the principal eye witnesses to the occurrence were then available, but because of the illness of Judge Connor no court was held in Craven County during January, and in consequence the case went over to February.

The witnesses above referred to are a young man and two young ladies who were riding in the automobile with young Baugham at the time of the accident. Some time in January, after the adjournment of the January Court on account of the illness of Judge Connor and after the witnesses above referred to had been returned by their parents to school, I called up Solicitor Abernethy by telephone and requested him to agree to a continuance of the case from the February term to the June term of court, stating to him as a fact that our three principal eye witnesses were away attending school and their parents objected to bringing them back in February, not only because of the trouble and expense involved but also because it would seriously break into their school term, and be-

## Another Sensation Created By Judge Carter Yesterday

sides which I had no way of compelling the attendance of one of them who was then out of the State. I further stated to Mr. Abernethy that these witnesses would be at home in June and that the case could then be tried as well as now without prejudice to the State or the defendant. After some persistence on my part Mr. Abernethy replied that it was up to the Judge and not to him to say whether the case should be continued and that in any event Mr. Nunn, who represented the private prosecution, would have to be consulted; to which I replied that I felt sure any Judge would see the reasonableness of my request and grant the motion to continue, and I requested that he mention it to Mr. Nunn. Mr. Abernethy finally stated he would consent to a continuance under the circumstances if Mr. Nunn did not object, and later he informed me that he had seen Mr. Nunn and that they would consent. I therefore regarded the case as practically continued from February to June, being confident that any Judge would ratify and approve the Solicitor's consent under the circumstances, and so notified my associates.

I was away from home until Wednesday of this week and saw no account of the trouble between Judge Carter and Solicitor Abernethy until Wednesday forenoon, when I at once wrote Judge Carter the substance of the foregoing statement, the receipt of which Judge Carter later acknowledged. I mailed copy of my letter to Judge Carter to my associates, Messrs Moore & Dunn, but mailed no copy to Mr. Abernethy, and so far as I am aware, he only today learned the contents of my letter to Judge Carter.

A. D. McLean.

#### J. M. Smith.

State of North Carolina,  
County of Craven.

J. M. Smith being duly sworn deposes and says: When court opened on Monday morning, February 8th, 1915, and after the Grand Jury was selected and the Judge had charged the Grand Jury, the case of State vs. Baugham was called for trial.

Mr. Abernethy got up and asked that the case be continued, and the Judge wanted to know why. Mr. Abernethy started to explain, but the Judge did not seem to want an explanation and ordered him to sit down. The Judge got busy with the Clerk looking over some books, and it seems as if there was something which the Judge wanted to know which the Clerk could not get right away, and Mr. Abernethy got up second time and the Judge ordered him to sit and then fined him \$50.00.

In Mr. Abernethy's efforts to explain the cause of the continuance, the Judge remarked to Mr. Abernethy that he reckoned that he did want to explain because his conscience was hurting him. Mr. Abernethy seemed to be anxious to explain to the Judge the reason for the continuance and the Judge seemed not to care for any explanation. Mr. Abernethy was at all times very humble and respectful to the Judge. The Judge exhibited much temper and in his remarks to Mr. Abernethy he pointed at him with his hand and told him to sit down, which Mr. Abernethy did.

#### J. M. Smith.

State of North Carolina,  
County of Craven.

David P. Henry being duly sworn deposes and says: That he is a citizen and resident of the county of Craven and State of North Carolina, and was a regular juror at the criminal term of the Superior Court of Craven County which convened in New Bern in said county on Monday, February 8th, 1915, at which court Judge Frank Carter presided.

That after the Court had charged the Grand Jury and while the docket was being called my attention was called to some mention either by the Court or the Solicitor, Mr. Charles L. Abernethy, I do not remember now which, to the case of State vs. James H. Baugham, the court asking if this was one of those cases of influence, or words to that effect, in which the case was dragged along, stating that he had called the attention of the Grand Jury to the lack of enforcement of law, and the increase of crime, mentioning the percentage of the increase in the last six years, and that he had expressed himself very forcibly to the Grand Jury upon this point.

Whereupon Mr. Abernethy arose and addressed the court in the most respectful terms and stated that he felt that the remarks of the Court

#### Continued on Page 4

In Statement Which He Orders Spread On the Records of Craven Superior Court He Condemns Solicitor Abernethy in His Conduct of the Case Against James H. Baugham of Washington, N. C.—The Solicitor Protested to the Filing of This Statement and the Judge Adds an Additional One to It and Both Go On Records.

Craven Superior Court for the trial of criminal cases and which has been in session here all during the past week, and a post eventful session it has been, came to a close yesterday, but before the curtain had been drawn on the proceedings, Judge Frank Carter presiding over the session, made a final statement in regard to the case in which he had found Solicitor Charles L. Abernethy in contempt and fined him fifty dollars.

This affair started last Monday and has been one sensation after another all during the week. The Judge on Thursday afternoon demanded that the solicitor make a full statement as to the case of the State vs. James H. Baugham, charged with murder (the case which caused all of the trouble) and this the solicitor declined to do so, taking as his stand that the time for explanation had passed and that he did not deem it proper for him to make the explanation. However, he did make a statement in which he set forth his contentions for not going into the whole affair.

This statement was handed to Judge Carter on Friday morning and it was expected that he would have something to say in regard to it on that day but such he did not do. Yesterday before the close of the session he made a statement in the form of a memorandum, which he ordered spread upon the records of the court. This statement sets forth the judge's side of the affair and in it he explains his action. It follows:

#### Judge Carter's Statement

North Carolina, Craven County, Superior Court, February, Criminal Term 1915.

State vs. James H. Baugham, memorandum.

In charging the Grand Jury at the present term, the presiding judge felt constrained to direct attention to the statistics of homicide in North Carolina contained in the last report of the attorney general, showing a fifty-nine per cent increase in the number of prosecutions for that crime within a six year period; and in speculating upon the causes operating to produce so deplorable a condition he expressed the fear that the restraining influence of the courts was being progressively weakened by a widespread feeling that, as administered, the law was a respecter of persons—that the courts were comparatively impotent to bring influential criminals to conviction and punishment.

Immediately thereafter, while engaged in the perusal of the criminal docket, the solicitor asked the court to note that the case of State vs. James H. Baugham, for murder, had been continued by consent. The Judge expressed a desire to be informed as to the reasons for the continuance, but instead of giving any reason the solicitor stated that he regarded the inquiry as a reflection upon his official conduct. The judge disclaimed any intention to reflect upon the solicitor and, reminding him of the aspects of the charge to the grand jury above adverted to, stated that he conceived it to be his duty to inquire as to the sufficiency of the reasons for continuing a case of so great public importance. He then proceeded to inquire as to when the bill was found and how often the case had been continued, but the solicitor was either unable to give the information asked for or preferred to rely upon his constantly reiterated complaint that the court's inquiries reflected upon him. His course was next had to the clerk and the minutes of the court, from which, after an interruption caused by the contemptuous behavior of the Solicitor, it was finally learned that the prosecution was initiated upon a grand jury presentation and bill of indictment found at the September, 1914, term; that the case was thence continued to the October, 1914 term and the defendant let to bail in the sum of \$3,000.00, that at the said October term the case was again continued upon the same bill, and it appeared from the statement of the solicitor that in advance of the present term of court it was agreed

Continued on Page 4