

Money For New High School Reposes In Three Banks

Probably Will Remain There for Twelve Months or More
Until Suit Brought by Contractor L. B. Perry
Against Bonding Company Can be Settled

Though Elizabeth City's new quarter of a million dollar high school building is now complete and in daily use, it is not paid for, and probably will not be paid for any time within the next twelve months, so tedious are the processes of the courts in settling civil issues.

A little more than \$50,000.00 of the money derived from the sale of the issue of \$400,000 in school bonds has been equally divided among three of the Elizabeth City banks, where it will remain at interest until a suit brought by L. B. Perry, to whom was awarded the contract for the erection of the building, versus his bonding company, the Southern Surety Company of Des Moines, Iowa, can be settled. As the suit has been but recently instituted and many cases are on the calendar ahead of it, probably it will not go on the calendar for trial before January 1925.

In order to discharge fully all their obligations and to avoid further liabilities in the matter, the board of school trustees of Elizabeth City at the February term of Superior Court here obtained from Judge Devin an order permitting them to pay the amount in controversy, \$54,028.79 to be exact, into the hands of the Clerk of the Superior Court to be divided equally among the First & Citizens National, the Savings Bank & Trust Company and the Carolina Banking & Trust Company and deposited at interest until the suit can be settled.

The suit, however, involves upwards of \$80,000, as the plaintiff is asking for a punitive award in the sum of \$25,000 "for damages to his credit and reputation."

The suit is the result of a controversy between Mr. Perry and his bonding company as to the terms of a contract entered into in September 1923.

It is the claim of Mr. Perry that the contract agreed upon in the fall of 1923 annulled a former contract entered into when the construction of the high school began. The surety company's representatives, on the other hand, contend that the contract entered into in September 1923 was to be considered simply a part of the contract made in July 1921 between Mr. Perry and the bonding company, and the surety company asks the court for \$33,000 which it claims it advanced to Mr. Perry in September in order that the construction of the high school building might be completed.

The Complaint
In substance the complaint contends: "That on or about the first day of July, 1922, the plaintiff entered into a certain contract with the Board of Graded School Trustees of Elizabeth City, under the terms of which, for an agreed compensation of \$273,650, the plaintiff undertook and agreed to construct two certain school buildings, the Elizabeth City High School and the colored graded school building.

"That as a condition of awarding the plaintiff the contract, it was required by the Board of Trustees that the plaintiff, prior to taking up the work of the contract, should execute a bond in the sum of \$135,000, and that the plaintiff thereupon on July 15 executed said bond with the Southern Surety Company.

"That in August, 1923 when the graded school had been practically completed, the plaintiff, being in need of financial assistance to fully complete the high school, made application to the Board of Trustees to reduce the amount of the agreed compensation to be retained by the board until the completion of the contract, to ten per cent, and went before the board with a representative of the defendant company, one Butler; but that the board refused to consent to the plaintiff's request for the reason that it did not have the money to make advances; that thereupon on the first day of September, 1923, the defendant agreed to assume and absolutely discharge all terms of the contract binding upon the plaintiff, and particularly agreed to pay all the outstanding bills for labor and materials contracted by the plaintiff in the performance of said work then due (except \$6,000.00 specifically assumed by the plaintiff) and, for this purpose, to keep on deposit in the bank at all times sufficient funds for the payment of labor and material bills; such funds to be deposited in the name of the plaintiff as trustee and to be drawn only upon the plaintiff's check, countersigned by W. A. Worth.

"That plaintiff has been ready, able and willing at all times to perform the contract on his part and, having duly assigned to the defendant all amounts due or to become due by the plaintiff under the terms of his contract with the board, the plaintiff did immediately enter upon the execution of the contract on his part. Later the defendant in wrongful breach of the contract refused to pay the remainder of the bills due at the time of

the execution of the contract or to further perform in any particular the terms and obligations binding upon the defendant.

"That as a natural and approximate consequence of the breach there is now outstanding and unpaid the sum of \$37,211.09, with interest, bills for material due upon the execution of the contract, and \$11,421.11, with interest, bills for materials subsequently becoming due, and that the plaintiff, has been compelled to pay and has paid the amount of \$297.48, bills for materials becoming due and the further sum of \$7,545.05 for the labor used in the completion of said work since the execution of the contract — all of which said amounts, for both labor and materials, the defendant contracted to take and wrongfully refused to do.

"That at the time of the execution of the said contract, there was still due upon the plaintiff's contract with the board, to be paid to the plaintiff upon the completion of said building the sum of \$61,933.49 — of which amount a certain portion was paid by the board to the defendant company as the plaintiff's assignee, during the defendant's temporary performance of said contract — leaving now in the hands of the board the sum of \$54,028.89 and a further sum for extra work, of \$1,851.00, all of which the plaintiff by reason of the defendant's default, is justly entitled but which the defendant wrongfully refuses to consent to be paid over to the plaintiff by the board.

"That at the time of the execution of the said contract the defendant caused the plaintiff to write to a large number of creditors for materials, giving the plaintiff personal assurance that the bills would be paid at an early date; and that by reason of the defendant's failure to pay certain bills, as agreed and further to perform its other agreements not in the contract — all of which said defaults on defendant's part were as plaintiff is informed, believes and so avers, wilful, wanton and malicious — the plaintiff, in addition to the pecuniary loss sustained, has been damaged in his credit and business reputation in the sum of \$25,000.00.

"Wherefore, the plaintiff prays judgment against the defendant in the sum of \$56,474.73, with interest, being the amount due for labor and materials; that the defendant be required to immediately consent to the application by the Board of \$55,879.89 to the amounts due as aforesaid; for the \$25,000.00 damages to the plaintiff's credit and reputation and for his costs in this action to be taxed by the clerk."

The Answer
The bonding company's answer, after admitting the execution of the surety bond referred to in the complaint, continues in substance as follows:

"No liability whatever has been assumed by this defendant except such liability as was fixed upon them by the execution of the bond referred to which was executed upon the application of the plaintiff.

"On about the 11th of September, 1923, Mr. Perry, having completed the erection of the colored school building and having received from the Board of Graded School Trustees practically the entire amount of the price to be paid him for the building or the entire proportion of the said contract price which was due him and on account of the colored building and having also completed a substantial part of the work on the High School Building and having received a substantial proportion of the compensation due him under the contract for the High School Building, represented to this defendant that he was embarrassed financially and by reason of his financial embarrassment would have difficulty in completing the High School Building in accordance with the contract and that by reason of the same this defendant, under its contract of suretyship, was likely to suffer substantial loss and the plaintiff representatives as a result of which and in connection with the contractual relationship already existing between Mr. Perry and this defendant in the form of application and bond, an agreement was reached between the parties looking towards the further financing of Mr. Perry in connection with the High School

Building by this defendant under an arrangement which would enable him to complete the same in accordance with the contract and at the same time save this defendant Surety Company harmless.

"In accordance with the agreement and understanding and in an effort in good faith to carry out the spirit and letter of the same, this defendant advanced for the benefit of Mr. Perry a large sum of money, \$33,000.00.

"This defendant complied in all respects with both the letter and the spirit of the true agreement made and entered into between the parties and in keeping with the same made large outlays by way of advancements for the use and benefit of the plaintiff in connection with the buildings as above set forth.

"The plaintiff failed to keep his agreement either in letter or spirit and particularly the plaintiff wrongfully and unlawfully misapplied a large part of the funds received by way of advancements as above set forth and paid the same on debts and obligations other than those contracted with the High School building and those contemplated by the agreement; and further failed and neglected to give notes and secure leases for the particular claims aggregating \$6,000, set forth in the agreement; and further failed to furnish to this defendant statements and information requested by this defendant through its agent concerning the claims and accounts referred to in the agreement; and further, in failing and refusing to permit the defendant through its representatives to secure desired and requested information and statements from the claimants with reference to the claims, failed to comply with his contract; and finally the plaintiff declined and refused to admit any liability, whatsoever for any of the funds advanced by this defendant to the plaintiff or for any which might be advanced by the defendant under the arrangements, and then only this defendant declined to make further advances to the plaintiff and this defendant is informed, believes and alleges that its refusal to make further advances when the plaintiff was declining to admit liability to reimburse the defendant was rightful and that the plaintiff had himself breached the contract in this and various other particulars.

"This defendant has in all respects complied with its agreement with plaintiff but contends that the plaintiff has wrongfully breached his agreement and has refused to repay or to recognize his obligation to repay or refund to this defendant the advances so made in his behalf.

"This defendant prays that plaintiff take nothing by his action and that as to it this defendant go without delay and recover its costs; that the agreement between the parties if necessary be reformed in accordance with the true agreement made between them; that an accounting be had and taken between the parties to ascertain the amount due this defendant by way of advancements to the plaintiff, and that this defendant have judgment on its counter-claim for plaintiff's breach of his contract and for the money so had, received, paid out and advanced in behalf of plaintiff in the sum of \$33,000.00 and \$16,747.00 or some other large sum together with interest on the same for costs and for such other and further relief as the defendant may be entitled to receive."

GASTONIA MILLS TO CURTAIL OUTPUT
Gastonia, March 14.—Local cotton mills will curtail their output by 25 per cent on account of the inactive market for yarns.

KIDDIES' COLDS
should not be "dosed." Treat them externally with—
VICKS VAPORUB
Over 17 Million Jars Used Yearly

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Give Us A Ring.
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The Apothecary Shop
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For Service and Satisfaction
AUTO SUPPLY at VULCANIZING Company
PHONE 497

ALONG THE WATERFRONT

The freighter Nellie Bly is hauled out on Willey's railway undergoing repairs and conditioning.

The tug Lambert's Point was launched Thursday from the railway at the Elizabeth City Iron Works, after undergoing repairs which have lasted several days.

C. P. Daniels has libeled the freighter Nellie Bly for seaman's wages in the United States Court. The owners of the craft, W. H. Hampton and Sons, have given bond for the release of the vessel and will probably fight the libel proceedings.

Vessels in Port.
Schooner W. M. Hill, foot of Main street.

Schooner Flossie M. Muir at Woodley's wharf.
Steamer Texas, at Elizabeth City Iron Works, waiting for charter.

Steam tug Viente y Tres, at Elizabeth City Iron Works, tied up.

North River Line.
Steamer Annie L. Vansciver sails Tuesdays, Thursdays and Saturdays at 2:30 p. m. for Cowells wharf, Old Trap, Newberns Landing, Jarvisburg, Barnetts Creek, Coinjock, Indian Island, Long Point and Norfolk.

Gas boat Eva sails Tuesdays and Fridays at 11 a. m. for Point Harbor, Halls Harbor, Hog Quarter, and Kitty Hawk.

Gas boat Jones sails Thursdays at 2 a. m. for East Lake, Gum Neck, Kilkenny and Fairfield.

Elizabeth City Boat Line
Steamers Harby and Virginia Dare—daily at 3 p. m. for Jarvisburg, Indian Island, Coinjock, Long Point and Norfolk.

Wanchese Line
Motor vessels Hattie Creef and Pompano sail Tuesdays, Thursdays and Saturdays for Wanchese, Stumpy Point, and Mann's Harbor.

Matthews Line
Gas boat Ray sails Mondays, Wednesdays and Fridays at 2 p. m. for South Mills.

Bennett's N. C. Line
Emma K. sails Tuesdays, Thursdays and Saturdays at 2 p. m. for South Mills, and Pasquotank River landings.

Guthrie Line
Rebecca sails Wednesdays for Englehard, Middleton, and Lake Landing.

Cooper Line
Mamie G. sails Thursdays at 10 a. m. for Columbia and Creswell.

Alligator River Line
Isle of Surry sails Wednesdays and Saturdays for Fairfield, Gum Neck and East Lake and Kilkenny.

Eastern Carolina Transportation Co.
Steamer Trenton sails daily at 1:30 p. m. for Nags Head and Manteo.

NEW GRANDY BUILDING IS NOW BEING OCCUPIED
Elizabeth City's newest business building is now being occupied. The new Grandy Building on Water street adjacent to the Camden bridge has been leased to three firms; the Tidewater Bulk Company, W. F. Williams, and C. A. Tasker. The first two named are already installed in their new headquarters and the third location is ready for occupancy.

NEW ARRIVALS
Big assortment of Boys Two Pants Suits now on display. T. T. TURNER & Co.

THE WOMAN'S WEAR STORE



The New Sport Top Coat

Chic from the collar down, these new Spring Topcoats assure such delightful smartness you won't be able to resist buying one—once you have seen them. Many stylish overplaids, Roman stripes; also plain colors in tan, fallow, camel, etc., are shown in smart models, fashioned of materials correct in weight for the present and chilly Spring days later on.

All are beautifully lined and have diversity enough in fashioning to satisfy the most discriminating taste.

Moderately Priced

\$10⁹⁸ to \$49⁵⁰

See these Coats—the freshness of Spring is evident in each one of them.

M. Leigh Sheep Co.
WOMAN'S WEAR

Looking At It From Your Side

ONE-SIDED TRANSACTIONS HAVE NO PLACE IN THIS BANK. WE BELIEVE IN LOOKING AT BOTH SIDES—YOURS AS WELL AS OUR OWN.

OUR CHIEF CONCERN IS TO PLEASE YOU, NOT OURSELVES; AND WE WILL GO AS FAR AS SOUND BANKING PRACTICE WILL LET US IN GIVING YOU THAT KIND OF SERVICE.

INSTEAD OF DOING AS LITTLE AS WE CAN FOR OUR CUSTOMERS, OUR IDEA IS TO DO AS MUCH AS WE CAN.

THEREFORE, NOTHING THAT YOU MAY ASK US TO DO IN THE WAY OF SERVING YOU WILL EVER BE REGARDED AS A "BOTHR."

WE ENCOURAGE THE OPENING OF SMALL ACCOUNTS

THE FIRST & CITIZENS NATIONAL BANK

ELIZABETH CITY, N. C.

TWO KINDS OF INTEREST—PERSONAL AND 4 PER CENT

NINETY ACRES HIGH LAND
Easily drained, located near Crooked Creek in Camden County about 200 yards from the Main Road. Will sell or trade. Apply to
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For Service and Satisfaction
AUTO SUPPLY at VULCANIZING Company
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ERNEST L. SAWYER, Clerk Superior Court, Mar. 13, 17, 24, 25.