

# The Polk County News.

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## NORTH CAROLINA AFFAIRS

The News of Old North State Gathered and Put in Condensed Form.

### Negro Rapist Caught.

Columbus, Special. — A negro named Richard Freeman alias Dick was wanted for an assault upon Lott Scott of Black Creek town, Wilson county, was captured while working at Ford and Mack's brick-yard. Some time since he was working on the farm of Mrs. Smith, about 15 miles east of here and upon hearing some one read about a reward offered for Mrs. Scott's assailant, suddenly disappeared. He was not even waiting to collect his wages. He was identified as the same man and Messrs. E. S. Ford and D. G. Harce effected his arrest. He tallies with the description given and the officers believe they have the right man.

### Receivers for Two Companies

Salisbury, Special. — Leo C. Wallace, a member of the firm of Wallace & Sons, was appointed receiver for the New London Mercantile Company at has within the past few days gone into bankruptcy. This company was forced to this step on account of the great credit business done by it. At one time it enjoyed most liberal patronage. R. B. Thompson was named receiver for the Hobbs-Koontz Lumber Company of Jacksonville, Duval county, and has taken charge of things. This receivership is not the result of business adversity but a step to the dissolution of partnership.

### Injuries Prove Fatal.

Salisbury, Special. — G. G. Britton of Aniston, Ala., took the remains of his brother, N. B. Britton who died at the Whitehead-Stokes Sanatorium following a runaway accident the day before, back to the home of the unfortunate man. He never regained consciousness after the accident. The brother arrived too late to see him alive. The dead man was traveling superintendent for the Inter State Roofing Company. G. G. Britton is president of the same company. They had contracts for roofing the new plants at Kannapolis, the junior brother having charge of the work. He was 35 years old and unmarried.

### Southern Pine Fruits.

Southern Pines, Special. — The shipment of peaches from the orchards around Southern Pines have been late this season, but the quantity has been greater than usual and the prices have been uniformly good. The big Van Lindley orchard has been getting away five or six hundred crates a day. While the orchards usually have a lot of culls and inferior fruit that is not suitable for shipment at a profitable figure, this year the market has been glad to get anything and the culls have been an unknown quantity.

### Dead Body of Boy Found in Nense.

Newbern, Special. — The dead body of Alonzo Peterson was found in Nense river at the Coca-Cola company's plant. The water was less than 4 feet deep and it is thought strange that a boy should have drowned under such circumstances. Coroner Jones examined the body and decided that it was plain the boy came to his death by drowning and that an inquest was unnecessary. The boy was last seen alive about noon Tuesday.

### Fayetteville Has Big Fire.

Fayetteville, Special. — Fire Thursday afternoon at the big Holt-Williamson Mills, in east Fayetteville, came near sweeping away the whole property, the main building catching two or three times. The dry house was destroyed.

### Attacked and Badly Hurt by a Cat.

Salisbury, Special. — Calvin A. Jacobs, a Franklin township farmer, was severely wounded by a cat that made a savage attack upon him at his home. The flesh on one of his hands was torn to the bone but he does not believe the animal was mad. Mr. Jacobs did not succeed in killing the vicious feline.

### Buggy Rolled Over Her Neck.

Lumberton, Special. — Miss Mattie McWhite, of this county, came near receiving fatal injuries while driving into town. Meeting her was a pair of runaway mules hitched to a wagon. They ran into the buggy threw Miss McWhite out, and the wagon wheel ran over her neck. The mules halted just as the wheel rolled on her neck and it had to be lifted off. She did not lose consciousness, and when taken to the hospital for examination seemed to have escaped unhurt.

### Site For Telephone Exchange Purchased.

Winston-Salem, Special. — The Southern Bell Telephone and Telegraph Company has purchased a lot 55x98 feet, on Liberty street, between Second and Third streets, upon which they will erect a large brick building. The lot was purchased from Messrs. J. A. Gray, F. H. Fries, H. E. Fries, W. A. Lemly and J. E. Gilmer. The plans for the new structure have not yet been drawn.

### Washington Wants the Shops.

Washington, N. C., Special. — Washington wants the shops of the Norfolk & Southern Railroad located in this city. The chamber of commerce and a large number of citizens are working assiduously toward that end, and everything will be done to induce the railroad company to establish these shops here. Several attractive sites have been offered and other attractive propositions have been made to the Norfolk & Southern people and it is sincerely hoped that we may secure this plant.

### Blood Hounds Capture a Man.

Fayetteville, Special. — A hurry telephone call came from Beards Station to Sheriff Watson to come with his bloodhounds immediately and he went at once. The dogs were put on the trail of a man suspected of breaking into the house of W. A. Beard, about which he was seen loafing and he was captured after a short chase.

### Tar Heel Topics.

Nine applications for pardon are refused by the Governor. Geo. Griffin, serving 12 years for manslaughter from Nash county; Will Hunt, serving four years from Forsyth county for larceny; James Grant, serving 15 years from Iredell county for murder in the second degree; Sam Carter, serving five months in Stanley county for retailing; Joe Ditty, serving two years from Rowan county for retailing liquor; Jas. Marine, serving two years on the roads in New Hanover for secret assault; Clyde Strayhorn, serving two years in Durham county for larceny; George Graham, serving two years in Henderson county for larceny; Sam White, serving three years in Cabarrus county for larceny.

The temperance forces of Raleigh have decided to call an election in Raleigh on prohibition or dispensary about September 15. A citizens' committee, consisting of N. K. Broughton, W. N. Jones, Z. P. Smith, S. J. Betts, W. J. Young, Dr. I. N. Pittinger and J. T. Miller, has been named to make the preliminary arrangements for the election and direct the campaign for prohibition as against the present dispensary system.

Charters are issued for the Sylvia Furniture Manufacturing Company of Sylvia, Jackson county, the capital \$20,000 by J. W. McKee and others; for the Powell-Murray Land & Timber Company, of Asheville, capital \$50,000, by George S. Powell, G. A. Murray and others.

Thomas Marshall is pardoned by Governor Glenn at the request of many citizens of Surry county. He was serving 20 years from 1902 for murder in the second degree. The Governor says on the evidence the jury could easily have acquitted the prisoner.

The Charlotte board of aldermen have determined to repeal the local ordinance which prohibits the Sunday selling of ice cream, soft drinks and cigars.

Governor Glenn has commuted the sentence of death to life imprisonment in the case of Ruffin Fuller, of Granville county, for criminal assault, the reason given being that the Governor is not willing to have life taken in punishment on the testimony of such a woman as the prosecutrix seems to be.

The Catawba Power Co. is now furnishing power to run the mills at Cherryville, 70 miles from the plant. A pardon is granted Jno. E. Cox, of Wayne county, serving eight months on the public roads for too severe whipping a negro boy, whom the Governor says appears to be a very bad fellow.

H. G. Putnam, chief electrician of the Selwyn Hotel, in Charlotte, received 2,700 volts of electricity through his body last week while attempting to cut a "live" wire. It was thought at first that he would die as a result but later he is recovering. Mrs. Carrie Nation lectured in Greensboro last week to a large audience.

## RATE LAW NOT VALID

The Federal Court Judge Declares the Penalty Clause of the North Carolina Rate Law Unconstitutional—An Appeal to the Supreme Court Taken by the State's Counsel—Attorney General Sent From Washington by President Roosevelt to Promote Peace Between State and Federal Courts.

Asheville, Special.—On Monday Judge Pritchard discharged Wood and Wilson, the ticket agents, and in doing so files an opinion of 4,000 words, in which he bases his action on the ground that agents were protected by his injunction and have a right to sell at the old rate until the new law is construed by his court. Also because the penal features of the new law is unconstitutional, because it is so heavy as to be confiscatory and prevent the roads from contesting it.

The action of the court in declaring unconstitutional the penalty clause of the rate, while not entirely unexpected here nevertheless excited intense interest. Prior to the rendering of the opinion Judge Pritchard was requested to postpone the decision until Speaker E. J. Justice could arrive in Asheville, it being stated that he was then on his way to this city. It was stated that Governor Glenn had telegraphed the request; but Judge Pritchard declined to grant this request, holding that the State was ably represented.

Before Judge Pritchard Monday afternoon T. J. Harmon, cited to appear and show cause why he should not be attached for contempt of court for disobeying the court's summons in the rate hearing last week, made answer to the rule, disavowing any intention or desire to bring the court into contempt and was discharged.

Discharge Not Absolute. In discharging Harmon the interesting and significant statement was made to him by the court that, while the respondent was discharged, his discharge might not be absolute; that he was still considering the advisability of proceeding against parties who were responsible for the action against Wood and Wilson, evidently meaning Police Judge Spears Reynolds, J. B. Wells and others who made affidavits and swore out the warrants on which Wood and Wilson were arrested, convicted and sentenced to road service for violating the State law.

Judge Pritchard's decision in the habeas corpus proceedings and railroad rate law is as follows:

United States of America, Western District of North Carolina, in the Circuit Court—

In re James H. Wood petitioner. This is an application of the petitioner Jas. H. Wood, to be discharged on a writ of habeas corpus from the custody of the sheriff of Buncombe County.

The petitioner was indicted on a charge of having violated the provisions of section 4 of an act passed at the session of the Legislature of North Carolina, of 1907, prescribing maximum charges, railroad companies may make for transporting passengers in North Carolina, tried and convicted and sentenced to a term of thirty days imprisonment to be worked upon the public roads of Buncombe county.

Some time since suits were instituted in the Circuit Court of the United States for the Eastern district of North Carolina by several railroad companies against the Corporation Commissioners of North Carolina. The Attorney General and the Assistant Attorney General of that State, for the purpose of obtaining protection of the fourteenth amendment to the constitution of the United States against an act of the Legislature of North Carolina establishing maximum rates which such companies claim to be confiscatory, and on a prima facie case motion was made before me for interlocutory injunctions.

Accordingly, on the 29th of June I issued injunctions pendente lite enjoining the defendants and all other persons from putting the rates into effect during the inquiry before me as to the constitutionality of the same and from instituting prosecutions or attempting to impose penalties upon the companies, or their employees for failure to put into effect the statutory rates which are being contested. The court amply preserves the rights of all the traveling public by requiring a coupon to be given to each purchaser evidencing the amount to be refunded to him in the event the rates should be upheld and to secure the same ample bond and security was given.

This was in accordance with the policy of the statutes of North Carolina where a rate made by a commission is attacked. I thereupon referred the matter to a master to

certain and report his conclusions to me, and to avoid delay, required him in the order to make his report by the 25th of September, and fixed the hearing for the first Monday in October, so as to give the parties opportunity to have the questions involved finally determined by the Supreme Court at the earliest possible moment. There was nothing unusual in the proceedings which were instituted before me by the several railroad companies in the State. Similar suits have been instituted in the State of Alabama, where Judge Jones issued an injunction and also in the State of Georgia, where Judge Newman pursued the same course.

Notwithstanding the United States Circuit Court has thus taken jurisdiction of the whole matter, and was proceeding in an orderly way with its consideration, the evidence shows that the Governor of North Carolina has issued an address to the judges of the Superior Courts of the State questioning the authority of the court to make the order referred to and asking them to see that indictments against the agents and employees of the railroads and its officials be sent before the grand jury in order that the State may undertake the prosecutions which are enjoined in my order, and stating that as Chief Executive of the State, he stands ready to aid them in enforcing the law. In accordance with this policy a number of indictments have been found and prosecutions begun in defiance of the order of injunction issued by the United States Circuit Court. If these prosecutions are permitted and continued, the result will be to nullify the injunction which was granted by the Circuit Court and practically defeat its jurisdiction. Not only are the rights of litigants involved, but the dignity and authority of the Circuit Court of the United States as well. These prosecutions and arrests taking place in widely separated portions of the State present serious difficulties in the matter and this court is confronted with open and avowed opposition by the powers of the State. Obstacles are being thrown in the way of inquiry by this court on writs of habeas corpus into the legality of arrests, and this seems to be the deliberate policy of those representing the State. I do not wish to be understood as imputing improper motives to the Governor or other

in this matter. The penalties prescribed by the State statute for charging more than the statutory rates are so numerous that if permitted to be enforced they would practically bankrupt the railroads in an exceedingly brief time and before a final hearing could be had in the case and thus placethe complainant in a position where it would be powerless to assert the rights which is guaranteed to it by the constitution of the United States. If the criminal prosecutions against the agents, conductors and employees are permitted to continue the managers of the railroads cannot successfully operate their trains, carry the mails or continue their usefulness in interstate commerce.

The constitution of North Carolina contains ample provisions for the protection and preservation of the liberty of the citizen. Article 1, Section 18, contains the following: "Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to such remedy ought not to be denied or delayed."

Section 21 of the same article also provides: "The privileges of the writ of habeas corpus shall not be suspended." Section 1821 of the revision of North Carolina is as follows: "Every person imprisoned or restrained of his liberty within this State for any criminal or supposed criminal matter or on any pretense whatsoever except in cases specified in the succeeding section, may prosecute a writ of habeas corpus according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint and if illegal to be delivered therefrom."

Section 1820 of the same chapter is the only law of which I have any knowledge which imposes upon a judge a penalty for a failure to perform a judicial act. The section question reads as follows: "If any judge authorized by this chapter to grant writs of habeas corpus shall refuse to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved \$2,500"

Thus it will be seen that the State constitution of North Carolina as well as the statutory law affords ample protection to every person who is deprived of his liberty without due process of law, and such being the case, it is remarkable that anyone representing the State should be opposed to the granting of the writ of habeas corpus. Likewise the constitution of the United States and the revised statutes afford every citizen of the Union when imprisoned contrary to law protection to the fullest extent by the writ of habeas corpus.

Article 1, Section 9, C. 1, 2, of the constitution of the United States is as follows:

"The privileges of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it."

Section 751, of the revised statutes of the United States, contains the following provision:

"The Supreme Court of the Circuit and District Courts shall have power to issue writs of habeas corpus."

"The several justices and judges of the said courts within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty."

Revised Statute, Section 752:

"The court or justice or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained." Revised statutes, section 755.

Notwithstanding the plain, provisions and enactments contained in the constitution and revised statutes of the United States as well as the State constitution and the statutes of the State, it is seriously contended that the agents of the complainant in this instance, when indicted for the violation of the statute, (the enforcement of which has been restrained by this court) are not entitled to this remedy which is afforded to every other citizen of the State.

If this policy is to prevail in North Carolina persons who invest their money in enterprises like that of the complainant will be deprived of the means of protecting their property rights and denied the benefits of the writ of habeas corpus which is intended for the preservation of the liberty of every citizen. It will be a sad day for the people of North Carolina when its citizens are prohibited by the acts of the Legislature from asserting any right guaranteed to them by the constitution of the United States. Suits of this character have been brought in different States of the Union and in every instance the Federal Courts have proceeded to determine the question involved without interference, hindrance or delay on the part of the judicial authorities of such States.

Asheville, Special.—After Judge Pritchard had signed the judgment Judge J. H. Merrimon, special counsel for the State, gave notice of appeal and waived bonds, but under the law the court fixed a bond of \$200 each for Wood and Wilson. Both sides co-operated to make the appeal as simple as possible in order to present the point at issue to the Supreme Court.

### Emmissary From Washington Sent by President Roosevelt.

Edward T. Sanford, as Attorney General of the Department of Justice, arrived here Monday morning, and it is understood that he comes as an emissary of President Roosevelt to promote peace between Federal and State courts, and to arrange that there shall be an appeal from both the State and United States courts. While Mr. Sanford declined to talk for publication, he did not deny that he came on a mission of peace. He brings the assurance that if the cases are allowed to proceed in an orderly course to the Supreme Court of the United States, the Department of Justice will request that court to advance the cases to an early hearing.

### Abdication of Korean Emperor.

Seoul, Korea, By Cable.—Emperor Yi Hyeung formerly abdicated the Korean throne at 11 o'clock Friday. In his parting address he expressed regret that national calamities had marked his forty-four-year reign. It is uncertain which of three princes will succeed Yi Hyeung. Inbrile, the Crown Prince, has the strongest backing, while the other two princes are supported by many.

### John Jones Not Guilty.

Monroe, Special.—The jury in the case of John Jones, on trial as one of the alleged lynchers of John V. Johnson, returned a verdict of not guilty, at 4:45 o'clock Friday afternoon, after being out about half an hour.

The service periodical, "The Navy," attacks the constitution of American vessels, declares that the Pacific cruise is a blunder and that the battleship fleet is in no condition to make the long trip.

"This great republic of ours shall never become the government of a plutocracy, and it shall never become the government of a mob," said the President. He might have added, declares the New York World, that there is no surer way of making the government of a mob than by first permitting it to become the government of a plutocracy.

## ORDERED AGENTS TO ROADS

Violations of North Carolina's Rate Law Meet Punishment

## ASHEVILLE JUDGE IMPLACABLE

Police Justice Reynolds Springs a Sensation at Asheville, N. C., by Committing the Two Southern Railway Agents to the County Roads for a Month—"Don't Give the Federal Court an Opportunity to Interfere With the State Courts," the Judge's Instructions to the Sheriff.

Asheville, N. C., Special.—Before Judge Spears Reynolds in the city police court District Passenger Agent James H. Wood, of the Southern Railway, also a member of the board of aldermen of Asheville, and O. C. Wilson, ticket seller for the Southern at the local passenger station, were tried on a charge of violating the new State-rate law of 2 1-4 cents a mile for transportation, convicted and sentenced to the county chain-gang for 30 days each.

Harmon was the only witness. At the conclusion of his testimony Judge Reynolds announced that the State would rest. Judge Charles A. Moore, of counsel for the Southern Railway, and representing the indicted agents, stated that he desired to introduce no witnesses.

"Can you or will you pay a fine?" The police justice directed the question to Mr. Wood, standing just in front of the bar, and apparently cool and indifferent to the result. Judge Moore quickly requested the police justice to address any questions to counsel. Again the question was put, this time to Judge Moore, "Can you or will you pay a fine?"

Judge Moore made reply that he would have to consider the matter. The police justice, saying that he regretted to do what he was about to, directed the clerk to make an entry that the defendants be sent to the roads for 30 days each. Judge Moore thereupon stated in open court that he intended to apply for a writ of habeas corpus and requested that the prisoners be allowed the custody of an officer.

While Judge Moore was speaking the police justice was handing two slips of paper to Sheriff Hunter. The papers were commitments for Mr. Wood and Mr. Wilson. "I trust," said the police justice, and handing the commitments to Sheriff Hunter, "that you will not give the Federal Court an opportunity to interfere with the State courts, which it has no right to do."

The prisoners were then turned over to Sheriff Hunter. The sheriff, at the request of Judge Moore, accompanied the prisoners to the office of Moore and Rollins. There was much interested speculation as to just what course Sheriff Hunter would pursue, whether he would send the convicted agents direct to the county chain-gang, some ten miles from the city, or hold the prisoner in custody awaiting action on a writ of habeas corpus.

### Released on Habeas Corpus.

Asheville, N. C., Special.—District Passenger Agent Wood and Ticket-Seller Wilson, under sentence of 30 days on the county chain-gang by the city police court for violating the passenger rate law, were taken before Judge Pritchard on a writ of habeas corpus at 11 o'clock Friday morning. J. G. Merrimon asked for a continuance of the hearing until his father, James H. Merrimon, specially employed by the State, could be present. Judge Pritchard granted the request and set the hearing for 2:30 in the afternoon, and remanded Wood and Wilson to the custody of the deputy marshal. Bonds in the sum of \$200 were allowed and the indicted agents were once more in the enjoyment of their liberty.

### Tennessee Bank Short \$30,000.

Gallatin, Tenn., Special.—The doors of the People's National Bank are closed pending an investigation of the condition of the bank. Some irregularities were discovered several days ago and President Payne telegraphed to Washington for an examiner who is now auditing the books. A discrepancy of \$30,000 has been found in the accounts.

### Two Fatally Shot, One Seriously Wounded in Pistol Duel.

Lexington, Ky., Special.—In a pistol fight that took place in a saloon at Pound Gap, on the Kentucky Virginia line, two men were fatally shot and another seriously wounded. William Robinson and John Centers, between whom an old grudge existed, met, and Centers opened fire. Several shots were exchanged and Centers fell mortally wounded. Half an hour later "Babe" Stewart and Isaac Bentley met and began shooting. Bentley was fatally and Stewart seriously wounded.