Weather forecast for Raleigh and vicinity: Fair and warm to-night; probably showers Saturday evening.

The Raleigh Times.

Do you watch the stores these bright days? What stores? Those that run an adv. in the Times.

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JUSTICE CONNOR LIBERATES KERR, CARROLL, SOUTHERLAND

Action of Judge R. B. Peebles in Sentencing Men to Jail For Contempt Found Unwarrented, the Rule Invalid and His Action in Not Notifying Them of the Proceedings Contrary to Law

OPINION UNANIMOUS

Hearing Which Was Begun Yesterday Afternoon at 4 O'clock Concluded at Noon Today—Colonel Argo Spoke for Judge Peebles—Mr. John D. Shaw Closed for the Respondents.

* * * * * * * * * * * * * *
* R. S. Southerland and E.W. Kerr, *
* of Clinton, and C. F. Carroll, of Wil- *
* mington, wer discharged at noon at *
* the conclusion of the habeas corpus *
* hearing before Justices Connor, *
* Walker and Douglas. Court ruled *
* that Judge Peebles' action in the *
* case was unwarranted. *
* * * * * * * * * * * * *

The Lumberton lawyers and Judge Peebles' contempt case attained its utmost height today at noon when Associate Justices Connor and Walker and Douglas agreed that Judge Peebles had no authority to attach Kerr, Carroll and Southerland for contempt, and therefore ordered the prisoners' immediate release.

The arguments began at 10 o'clock, and concluded a few minutes before noon. Col. T. M. Argo spoke for Judge Peebles and Mr. John D. Shaw made the closing speech for the respondents. The argument was utterly void of any personal feeling or passionate utterances, and only once during the entire proceedings was there anything like an approach to a remark that might be so construed, and that was hastily corrected by Judge Connor, and there was no re-occurrence of an unpleasant word.

Colonel Argo said in part: "Inquiry was made yesterday afternoon as to whom I represent in this case.

During the discussion of certain matters in the argument the counsel were frequently interrupted by questions. Judge Connor desired to know if the question as to the fact that the petitioners, Kerr, Carroll and Southerland, were not in the active presence of the court was in the record.

Mr. Shaw replied that the petitions were not filed in the actual presence of the court, and that the record does not state whether they were there or not.

Colonel Argo said the point was immaterial, that the respondents were constructively in court if not otherwise.

Judge Connor desired to know exactly how the record was.

Mr. Busbee replied that at that time the three men were in Sampson county.

Judge Connor said that the counsel would be allowed to make it a matter of record, and to do this, if necessary, he would reach a conclusion by having before him competent evidence, men who were actually in the presence of the court and could say whether the petitioners were there. He said that he desired to ascertain as a matter of fact whether the petitioners were there.

Mr. Shaw declared that the petitioners were not in the presence of Judge Peebles and that they could prove that they were not even in the county at the time, and that they had received absolutely no notice of the contempt proceedings, and that they knew nothing about it until they were in the custody of the sheriff.

Justice Douglas asked if they had any notice of the contempt proceedings, and Mr. Shaw replied they had not.

It was here announced that Judge Peebles admitted that the petitioners were not in his presence, and that he had no objection to the fact being made a part of the record.

Justice Connor said that it had been admitted that at the time of the contempt proceedings the petitioners were not in court, and had received no notice of the proceedings.

After this brief discussion the argument continued without interruption.

"On account of the unfortunate turns this case has taken under ill advisement there has been substituted, or an effort has been made to substitute, Judge Peebles for the real respondents in the case, so that in effect not only Judge Peebles, but the whole judiciary of North Carolina, its powers, duties and authority are involved.

"I would not indulge in any unjust criticism of any of the lawyers in this case. They are members of the same profession as myself. The certificate upon which they were admitted into the court as being administers of justice advocates of right the maintaining or the majesty of law, the relievers of the oppressed, stamps them as members of our glorious profession. But if I were so inclined the person whom I represent would forbid it. It is not Judge Peebles' desire to gratify any malice I may have or ill will he may have. Mine would be a feeling of deprecation, of regret, for the unseemly aspect. There is no safety but in the unquestioned majesty of the law. There is no protection for the helpless, no guarantee of the possession of the strong, no rule for the right, no similitude, except in the full operation of the majesty of the law.

The question involved here concerns us directly, and indirectly the peace and welfare of everybody. The people receive their interpretation of the law from us primaril, and on us is the obligation imposed.

"You are the mouthpieces of the law. The law speaks through the judiciary and the judiciary alone. The judiciary are more powerful in determining the condition of prosperity or misry, woe or happiness than any other. A member of the legal profession is elevated to a seat upon it, had imposed upon him the obligation to interpret the law, he still is a man, and has his foibles. If a judge should err, and they err every day; err in conformity and rule, of propriety, forget they are the direct ministers of God and return to the ordinary condition of man, it is not upon us to censure them. They need no censure. The judiciary of North Carolina are as dignified, conscientious and able to discharge the duties conferred upon them as any men on God's earth.

"I will address myself briefly to the law involved in the case. They have said that, in the first case, Judge Peebles had no jurisdiction in the action, and state their reasons. This is a semi-criminal proceeding. It is an action at law instituted for the purpose of ascertaining whether the respondents are guilty of a punishable act. I cite our Code, section 1194. That states our answers to the objection that the rule was brought in the wrong county. But Judge Peebles said if you say this is in the wrong county, I will move it to Robeson county, thereby conforming to the law. In Cloud vs. Staton, 278-35, by virtue of the fact that he was holding court in Cumberland he moved it when requested to Robeson, he complied with the law.

"They say the parties should be discharged because the court had no jurisdiction of the subject matter, and therefore the court had no authority to punish as for contempt. That is not the right interpretation of the law. If he committed an error as to the extent of his jurisdiction that does not take from him the authority to save himself from contempt.

"The cases the other side quoted there is not one in which this jurisdiction question has arisen where judgment was not rendered in the case itself. I find an authority which establishes the jurisdiction of the court in the main cause. The court may not have power to decide upon the merits of the case, but it did have jurisdiction in wrongs passed in his court. Judge Peebles necessarily had the power, whether at the time he made an error in jurisdiction or not. They say that Judge Peebles had no jurisdiction because of the wrong venue. I cite sections 654 and 656 and 648, on contempt, and in 105 and 110, 533, which exclude certain cases. But we have authority just the other way. The court must have some means by taking information. If there is visual or oral proof at hand, then there must be and affidavit, and the court receives it as sufficient.

"They say the court had no jurisdiction in this case, but I have said necessarily the court did have jurisdiction in the main case. In this case, in accordance with the authorities, your honors will be convinced of the facts.

"Direct contempt can occur only in the presence of the court. But one who disturbs the good order of the court. But one who disturbs the good order of the court and impedes the progress of the court is in contempt. But in this case there is the more deliberate contempt. The papers were intended to be read in the presence, but more than that, it is published in the presence of the court in persuance of the authority of the court. Words are evanescent and pass away, but this is a more criminal and punishable crime. It is a record perpetuated. We are bound to accept the affidavits filed in his court to be true because the court requires it. But the judge says you have placed a stigma on my name that will go down in tradition. There could be no contempt more criminal than to put in an affidavit gratuitously and put in the records of the court. There will be no question about the character of the affidavits."

Mr. John D. Shaw, for the respondents, said he had nothing to say in criticism, but to address himself to the arguments in the case. "I am not here to prosecute Judge Peebles," he said. "He has gone outside the record in undertaking to say the respondents were ill advised. I realize that the only question here is whether Judge Peebles rendered a legal judgment. I want to call attention to some facts about this. In the original it is headed 'North Carolina, Northampton county,' and the rule is headed 'North Carolina, Cumberland county.' It could not have been regarded by Judge Peebles as a hearing at terms, and he makes it out of terms. We contend that this other proceeding was vain, because a judge outside of court cannot punish as for contempt, unless expressly authorized by law. There is no law in North Carolina which says these matters may be heard out of terms. When this case was moved it was not as stated by the counsel, but after the lack of territorial jurisdiction had been overruled. We make another motion in which we demand a change of venue, and that it should go to Robeson county, and he got blue and hot and white about it. On the 16th it was ordered that the respondents have time to mail their affidavits to him at his home in Davidson county, where they were received by him. But before an affidavit was filed in this case, and this appears in the record, after having filed the answer of the respondents, we demanded of Judge Peebles that he state the issues, and he refused, but afterward confusedly stated that it was probably the clerk's duty, and after that he said that drunkenness was an issue. This has been a peculiar trial the petitioners have had in the court below. Unknown, unheard and unseen prosecuted for a criminal offense, but more than that, adjudged guilty without notice or hearing. Upon the recital in the order itself Judge Peebles introduced the affidavits in the original matter without being given an opportunity of being heard or tried by the court and the first they knew of the order they were prisoners. They were convicted in the midst of the trial of the question that was at issue. He had told us that if we had affidavits to introduce them now. And yet on the 26th of May Judge Peebles stops upon the question and renders a judgment that he was sober and that the respondents were untrue. This question is now open and is to be decided upon the 14th day of June. He said 'My drunkenness is an issue in this case,' and the first man that swears on our side he serves order that he be put in jail. Counsel says we have acted ill advisedly and have not given respect to law and authority. If we ask for a fair trial and hearing, are we asking for more than we have a right to ask? It cannot be possible. Judge Peebles does not want us to get testimony o nour side of the question. The matter is this: judges like everyone else—there is no judge who should hope to be beyond criticism. We say there is absolutely no contempt committed by these affidavits. To start with, statutes all over the United States have been a restraint to punish for contempt, and contempt does not require any more than the laws of North Carolina demand. There is not a thing which of necessity should be done for which the law does not provide for and carry out. We say this is not a contempt. If these witnesses did make a false statement it is not a contempt. A judge cannot assume and decide that a man is guilty of contempt, even if the testimony is false, without a trial. We contend that if there is contempt here at all it would be a constructive contempt or proceeding as for contempt, and it would not be sustained by affidavit and rule issues. Presence in court which makes a direct contempt must be more than a figurative presence. This case presents this trouble. Before they convict, and yet the record shows there are certain facts which must exist, but as a matter of fact do not exist. There is a difference between a question venue and a question of territorial jurisdiction. In this case this was not simply an improper venue, but a violation of territorial jurisdiction. These questions necessarily arise upon the questions we are discussing in this case. If this is contempt at all it is an indirect or constructive contempt, and there must be a trial. I doubt whether an affidavit is sufficient. I think the petitioners here before you are entitled to their discharge, but considering these questions of jurisdiction, some intimation should be made in regard to it.

"I know of no other matters outside the brief to be presented by the petitioners here."

After the conclusion of the argument by Mr. Shaw, Justice Connor said that the judges would retire to hold a consultation, and would give an intimation as to the course to be pursued.

They were not out of the court room five minutes, and when they returned Justice Connor announced that the court had decided that in consequence of the fact that a number of interesting and delicate questions had been argued the justices unanimously considered one question without a doubt, that the parties should not be detained any longer, and that they thought the matter should be dismissed.

The justices, said Judge Connor, are unanimously of the opinion that in a habeas corpus proceeding if a prisoner is found detained by an invalid rule, and without notice having been given him, then he is entitled to be discharged, and ought to be discharged. The order will now be regarded as made that the prisoners are discharged.

Justice Connor said that the court would take the briefs and consider them, and would later render its reason for the course it had taken.

The question further to be considered, continued Justice Connor, is the cost of the proceedings, and he called upon the counsel for information. After a brief discussion Justice Connor said that the question was not as to whether the prisoners should pay the cost, to whom should the cost be attached. He said that he would take the matter under consideration and submit the order before 6 o'clock this evening.

GROUND TO PIECES AND DASHED ON ROCKS

A THRILLING ESCAPE OF MEN ON BRIDGE

(By Publishers' Press.)

Evansville, Ind., June 3.—Seven men had a thrilling escape from death at Henderson, Ky., yesterday. The men, with three companions, were crossing a trestle when the Louisville and Nashville passenger train came on the bridge. W. L. Stutz, of Adams, Ky., and Wiley Blackburn, of Bluff City, were ground to pieces, while William Scherer, of Carmi, Ill., jumped to the ground 50 feet below, and was instantly killed.

The other seven climbed down through the trestle and hung there till the train passed.

HUFF IS GRANTED WRIT OF HABEAS CORPUS

Associate Justice H. G. Connor this afternoon issued a writ of habeas corpus to George T. Huff, the white man in Wake county jail charged with criminal assault, returnable before Chief Justice Walter Clark Tuesday morning at 10 o'clock in the supreme court room.

The petition, the full text of which is printed below, gives the account of a peculiar and unusual manner of a trial for this part of the country, and is interesting. The following is the petition:

"NORTH CAROLINA—Wake County.

"To the Hon. H. G. Connor, a justice of the Supreme Court of North Carolina:

"The petition of the undersigned respectfully showeth:

"That affiant is informed and believes that George T. Huff is imprisoned or restrained of his liberty in the county of Wake, said State, in the common jail in the custody of M. W. Page, sheriff of said county.

"2. That the cause or pretense of such imprisonment or restraint is a warrant of commitment issued by Barham, a justice of the peace in said county and State.

"3. That a copy of said warrant or commitment is hereto attached as part of this petition.

"4. That said imprisonment is illegal in that the said justice had no authority or jurisdiction to issue the same, for the following reasons, to-wit: That the proceedings upon which the petition was committed were irregular and contrary to law in that your petitioner was not protected by the court in his right to be heard in his own behalf. That one Charles Jones was in said court at the time of said hearing armed and that while your petitioner was about to give in his evidence in his behalf or defence, the said Jones threw his hand to his hip pocket and ordered your orator to hush; that he was not going to allow any more of that sort of evidence. That the said Jones was armed with a pistol which your petitioner saw, and several by-standers threw themselves in front of said Jones to keep him from using his pistol. That the court seemed to be intimidated and failed to protect your petitioner or the dignity of the court, and that for this cause your petitioner was deterred from giving in his evidence which would have been sufficient to convince the said justice of the peace that he was not guilty of the charge. That your petitioner is informed and believes that the justice of the peace aforesaid has so expressed himself.

"That the bail required of your petitioner, who is a poor man, five hundred dollars, justified, is excessive and your petitioner is unable to give the same.

"Wherefore, your petitioner prays your honor that the writ of habeas corpus issue in this behalf.

"This the 3d day of June, 1904.

"GEO. T. (his X mark) HUFF."

"George T. Huff, being sworn, says that the foreging petition is true to his own knowledge, except as to those matters stated therein on information and belief, and as to those, he believes them to be true.

"GEO. T. (his X mark) HUFF."

"Sworn and subscribed to before me this June 3, 1904.

"(Seal) W. H. HOOD, J. P."

LAMSDORFF MAY RESIGN FROM MINISTRY

CONDITION SERIOUS CAUSED BY ATTACK

(By Publishers' Press.)

Berlin, June 3.—A dispatch to the Magdeburger Zeitung from St. Petersburg says that the condition of Foreign Minister Lamsdorff, who was attacked a few days ago by Prince Dolgorouki, is serious.

The Prince, the dispatch adds, dealt these blows on the Russian foreign minister's head with a stick having steel knots on the end. Minister Lamsdorff bled profusely and was unconscious when carried home.

A second dispatch received today from the Russian capital says that the Prince has apologized to the foreign minister.

The Czar, it is said, is going to appoint a commission to look into the mental condition of the Prince. It is also reported that Lamsdorff is about to resign.

RURAL DISTRICTS TO INCREASE LOCAL TAXATION

Information blanks were sent to all the county superintendents by State Superintendent Joyner a few weeks ago requesting each to forward the same to all the teachers in his county, and after he had received the information asked in these blanks to select ten of the best and forward them to the State superintendent. The blanks called for a report of the attendance of the pupils, the length of the school, the course of study, the number of daily recitations, and the advancement of the different classes. After examining these reports it was found that the number of daily recitations where all the public school studies were taught varied from thirty-five to fifty-five for one teacher.

Forty-five recitations are heard in a period of six hours, allowing on an average about eight minutes to the recitation, while a number of teachers are struggling wearily with a still larger number of recitations, devoting a correspondingly shorter time to each recitation. It is the object in North Carolina to improve these conditions that exist in probably four thousand white districts in the State, and Superintendent Joyner says that the only way improvements can be effected is by providing more money with which to increase the length of the school term and the teaching force. The limit of taxation has been reached in nearly every county in the State, and the only means left is by special local tax.

In concluding the pamphlet containing the report, which is being sent out over the State, Superintendent Joyner says:

"The preservation and improvement of the homes in the rural districts of North Carolina, where four-fifths of the people live, depend almost entirely upon the improvement of the public schools of the rural districts. Unless they can be made equal in merit to the best public schools of the towns and cities and adapted to the needs of the rural districts, many of the best people in the country will continue to leave the farms, thus drawing the wealth from the country to the towns that offer better opportunities for education. A good school in a prosperous community is the surest check upon this continual migration to the cities; and it is gratifying to give evidence that the rural communities are alive to this great question."

JUDGE PRITCHARD RELEASED DANIELS

Judge Pritchard Ruled that There Was No Foundation for the Action of Judge Purnell and Ordered Release of Mr. Daniels.

The Josephus Daniels habeas corpus hearing was begun before Circuit Judge Jeter C. Pritchard this afternoon at 3 o'clock in the federal court room.

Mr. Daniels and his attorneys were seated inside the bar, and as Judge Pritchard entered the audience rose.

Marshal Dockery read the writ issued yesterday by Judge Pritchard, and stated that he produced the body of Josephus Daniels and stated the reason of his detention.

Judge Pritchard asked District Attorney Skinner what was the practice in the court, whether the returns should be in writing, and being informed that it was, instructed the marshal to produce the return in writing.

Mr. R. T. Gray read the petition, which was submitted to Judge Pritchard at Alexandria, yesterday.

Judge Pritchard asked if the attorneys were ready to proceed, and enquired of the district attorney if he represented Judge Purnell.

Mr. Skinner said that he did not regard it his officil duty to represent the judge, as he had not been notified to do so, and that as he had been very busy during this term of court he had not prepared himself for the case.

Judge Pritchard stated that the judge should be represented, and that he thought it was the duty of the district attorney to represent him.

Judge Winston asked if Judge Pritchard desired the record to be read and Judge Pritchard said it was not necessary.

Judge Winston then said that he would seek in a general way to establish a minor proposition that the facts in the petition are true. "No evidence, said Judge Winston, was taken below, and none will be offered here. We would endeavor to show your honor from the highest authorities that your honor has jurisdiction.

"We are aware of the fact that in hearing a habeas corpus proceeding only jurisdiction matters will be heard by your honor."

Judge Winston cited several authorities and cases, but Judge Pritchard said that it was not necessary to discuss that phase of the case.

Judge Winston said he thought it was plain, and proceeded: "We have the publication in the newspapers, the rule, the answer to the rule and the petition to your honor for a habeas corpus, and the facts are to be taken as true."

Then Judge Winston briefly reviewed the case from last Saturday, when the district special court adjourned, after the receivership order of Judge Purnell had been issued, and then Sunday morning, when Mr. Daniels wrote the newspaper articles, until the present hearing.

Judge Winston then said he came down to a consideration of the question of jurisdiction. He cited a large number of authorities and cases, some of which were identical with the case at the bar. "It appears from every page of the record that the alleged offense was not embraced in section 725 of the revised statutes, but was just the very opposite. The man who deliberately goes in the teeth of that statute, if that is law, does violence to the citizens just as a man who lays his hands on him does personal violence. And what is outside of that statute is annullity. When a judge has the power to punish for a misbehavior in his court, that is all the power that is necessary.

At the conclusion of Judge Winston's argument District Attorney Skinner addressed the court in justification of Judge Purnell's rule.

After the close of Mr. Skinner's remarks Judge Pritchard said:

"I have no question as to the sincerity of the purpose of the distinguished judge in rendering the decision, but after carefully examining section 725 of the revised statutes, I do not find any ground to support the action. The defendant is therefore ordered released and this proceeding stopped."

No demonstration was allowed in the court room.

This order of Judge Pritchard releases Mr. Daniels from the $2,000 fine as well as gives him his liberty.

One of the most distinguished lawyers and judges in North Carolina said directly after the order of Judge Pritchard was made: "This action, the first to be made by Judge Pritchard since he has ascended the circuit court bench, has distinguished Judge Pritchard, as few judges have such an opportunity, and he has won his way directly by this single act into the hearts and affections of North Carolinians.

There was a great rush to Editor Daniels in the court room, and he was congratulated by hundreds of people.

Telegrams of congratulation are already pouring in, and there is general rejoicing throughout the State.

NEGRO WAS KILLED AT BALL GAME YESTERDAY

Sherwood Hinton, a negro youth, killed Manley Wilder, another negro, at a game of baseball at the fair grounds yesterday afternoon. The homicide occurred at 5 o'clock. The murderer escaped and has not been heard from since.

Hinton was one of the ball players, and Wilder was a spectator on the bleechers.

The trouble grew out of the "rooting" of Wilder, which caused a heated discussion between him and Hinton, which led to the lie being given, and from this to swearing and cursing each other, and this led to blows. Hinton had an advantage over Wilder, and fractured the latter's skull with a baseball bat.

Hinton, perceiving the probable outcome of his deed, fled and Wilder was carried directly to Rex Hospital, where he died this morning a few minutes before 6 o'clock.

The officers were notified and immediately began a search for Hinton, which is now being conducted on a larger scale. Sheriff Page has wired all over the State to the authorities to keep a strong lookout for the negro and giving a full description of him and his habits.

The following is the description of the murderer: Age 20 to 22. Weight 140 to 160 pounds. Height 5 feet 6 or 7 inches; inclined to be stoop-shouldered. He slings his arms when walking. Has no trade. Hangs around bars, and is generally found in low dives with the worst class of lewd women. Is a dark mulatto and at present his face is bumpy.

Wilder was of the same age as Hinton and was a young giant, being probably one of the strongest negroes in Raleigh. For several months he was an employee in the Times office, and was always found faithful and obedient, and was well behaved and industrious.

HON. C. B. WATSON CONTRADICTS REPORT.

It having been currently reported on the streets that Mr. C. B. Watson, an old soldier and one of the most prominent Democrats in the State, influenced Mr. Glenn to sign the letter favoring Governor Russell for chief justice, Mr. Armistead Jones this morning sent the following telegram to Mr. Watson:

"Raleigh, N. C., June 6, 1904.

"Mr. Cyrus B. Watson, Winston, N. C.

"It is reported here that you, an old Confederate soldier, induced Mr. R. B. Glenn to sign the letter to Governor Russell, asking him to become chief justice. This is being circulated to influence the primaries here tomorrow. If it is not so, please wire me the facts at once. ARMISTEAD JONES."

Mr. Watson very promptly wired Mr. Jones as follows:

"Winston, N. C., June 3, 1904.

"Mr. Armistead Jones, Raleigh, N. C.

"There is no truth in the report that I influenced Mr. Glenn to favor Governor Russell for chief justice. Letter this evening. C. B. WATSON."