

### Juggling With the Courts.

The State printed yesterday a communication to A. S. Douglass, Esq., of Winnsboro from Chief Justice Y. J. Pope, embracing a telegram from Former Judge O. W. Buchanan and a letter from J. E. McDonald, Esq. The publication of those communications was to explain why, when such was not the fact, Justice Pope made the official announcement at Spartanburg on Sept. 14, to a reporter that "the entire bar of Winnsboro has joined in the petition" requesting the annulment of the regular term of court for Fairfield—which would have left Judge Townsend free to hold court at Lexington. Ten days ago The State alluded to this whole proceeding as "jugglery"—and the additional light confirms that diagnosis. We then said: "Of course the chief justice is innocent of a participation in a conspiracy to defeat justice. We believe he has been deceived, grossly deceived; victimized by those who, in desperate fear of twelve honest men, will attempt to undermine the very foundations of the State."

We fear that the chief justice has been betrayed by a more cunning hand than appears on the surface; there being a double purpose—the first to defeat justice, the second that Judge Pope should be impaled on the spikes in the pitfall as a punishment for a former conscientious act.

Chief Justice Pope, on the first day of September, signed an order assigning Judge D. A. Townsend to assume the duties of Judge Gage, disqualified by illness, and to hold the regular terms of court in Kershaw and Lexington. At the Lexington term the trial of J. H. Tillman for murder was to be held. Judge Townsend presided at the last term of court for Richland when that case was last called and he granted the change of venue asked for by the defense.

The regular term of court for Lexington was to begin Sept. 21, and the regular term of court for Fairfield was also to be opened on that date. In December of each year the supreme court assigns the circuit judges to hold certain courts at certain places at fixed times. They cannot be relieved of an assignment so made except for disability. If a judge is from any cause disabled, the chief justice appoints "any other circuit judge **DISIN-TERESTED**" to hold such court; "in the event that there be no other circuit judge **DISENGAGED**" then there shall be appointed a special judge, a person learned in the law. We have quoted from the codified laws of South Carolina.

Now, besides other courts to which Judge Townsend was last winter assigned, was that opening in Winnsboro Sept. 21; therefore his assignment to hold court at Lexington on the same day that his duty required him in Winnsboro was **ILLEGAL** because he was **NOT DISENGAGED**. Any convictions at Lexington would have been invalid and the bar of Winnsboro were of the opinion that proceedings at their regular term, if not presided over by the legally assigned judge, Townsend, would be void.

The State of South Carolina, through the solicitor of the Fifth circuit, on the ground of illegality, protested against Judge Townsend sitting at Lexington. Counsel for the defense assumed the opposite position. Why was it desired that the clear, unmistakable mandate of the law should be violated?

On September 11 Justice Pope wrote the governor that he had "excused" Judge Townsend from presiding at the Kershaw court, recommending in his stead the appointment of Judge Benet.

Sept. 14 at a hearing arranged in Spartanburg by the chief justice for the attorneys for the defense not one appeared. Solicitor Thurmond was present in behalf of the commonwealth and there we for the first time hear of a proposition to obtain the presence of

Judge Townsend at Lexington even if to secure his leisure the regular term for Fairfield is moved out of the way. Justice Pope's authority for the statement that the lawyers of Winnsboro were unanimous for calling off the regular term was contained in an eleventh hour telegram from O. W. Buchanan, brother-in-law of J. H. Tillman, and, when the case had last been called in court, active counsel for the defense!

Here is the Buchanan telegram to the chief justice.

"J. E. McDonald, Esq., wrote you to Newberry Saturday, saying unanimous desire of Winnsboro bar special term be held third Monday Oct. Regular be called off."

Mr. McDonald, after noting the report that Judge Townsend had been assigned to the Lexington court, wrote to Chief Justice Pope:

"Under the regular assignment made last Decemr., Judge Townsend would have been the presiding judge at our term for Fairfield, which also commences the 21st instant—next Monday week. The members of our bar are uncertain in the premises whether or not our regular term will be held, inasmuch as it has not been announced whether or not some one will be assigned to hold our court at the time mentioned. We have a full docket and it will be impossible to have all the cases disposed of at the regular term.

"In this condition of uncertainty, I think it is the unanimous wish of our bar that in the event Judge Townsend will not be here, the regular term go by default, as it were, and that we be allowed to have a special term for four weeks, beginning the third Monday in October."

That letter is open to no misconception, even by a layman of ordinary intelligence. It was not for Mr. McDonald, attorney, to tell the chief justice of South Carolina that taking Judge Townsend from his regular assignment was illegal or that the appointment of any other judge, when Judge Townsend was not incapacitated, would nullify the court's work. But he indicated those points, and expressly stated: "In the event Judge Townsend will not be here" the bar preferred not having the regular term—the bar feeling that such term would be in the nature of a farce. The Buchanan telegram was utterly misleading, neither quoting the words nor reflecting the spirit of Mr. McDonald's letter.

The public, unacquainted with certain expressions of sympathy for one and with evidences of prejudice and animosity against another, cannot be so interested as ourselves in the inquiry, Why was Judge Townsend first assigned to hold court in Lexington?

For Frank B. Gary, Esq., appointed special judge for the Lexington term when the designation of Judge Townsend for that duty was recalled, we have entertained respect. His public career has been such as to inspire the belief that in whatever position he was placed it would not be unnatural for him to play the man. But, under the circumstances, we must think it was unnecessary to divide up the assignments of Judge Gage. Judge Benet assumed the duties of Judge Gage in Kershaw, but Mr. Gary was appointed to take up those duties in Lexington, because, as the chief justice said, "The bar of Lexington asked for the appointment of Mr. Gary." Is it usual for the attorneys for the defense in a criminal case to name the man desired to preside as judge? Does not the chief justice know that the majority of the members of the Lexington bar have been retained as counsel for one man who is to be tried for murder at this term of court, and that it was those lawyers who asked for the appointment of Mr. Gary as judge?

In the chief justice unaware of the fact that Mr. Gary is not only very closely allied by ties of friendship and politics to the Tillmans, but is in Senator Tillman's household known as "Cousin Frank?" This is no reflection on Mr. Gary nor on his honorable intentions, but when his disassociation with the family of the victim in the pending case is so well known, his assignment to this duty seems unfortunate—an injustice to Mr. Gary.

We are of those who have clothed the judiciary of South Carolina with a cloak of veneration. We have had pride in its ability, honored its integrity and defended it from the assaults of the politicians. South Carolinians may still maintain respect for that branch of the government, but we are not without evidence of the most audacious attempt to influence, by political pressure, the tribunal on the incurruptibility of which the people have staked their lives and liberties. For God's sake do not shake their confidence in the courts!