

## THE TILLMAN CASE.

### Judge Townsend Grants a Change of Venue from Columbia.

### BUCHANAN ABUSES THE PRESS.

### A Warm Debate Over the Selection of the Place of Trial.

### Ington County Finally Chosen.

James H. Tillman will be tried for the murder of N. G. Gonzales at the county seat of Lexington, beginning the third Monday in September, unless the defense obtains another continuance. The order for the change of venue was made by Judge Townsend in the criminal court on Wednesday afternoon after the argument was concluded and the place announced. Wednesday morning shortly after the court convened. In making the announcement the court said that he had given the matter much thought and had finally determined that Lexington was the proper place to hold the trial. The sheriff was ordered to have the prisoner there by the second week in September. Only the affidavits used in the change of venue proceedings were permitted to be filed, although the prosecution desired to have those filed also that were used in the proceedings to obtain bail before Judge Pope. We present below the arguments of the attorneys in the case after the affidavits all had been read.

### JUDGE CRAWFORD'S ARGUMENT.

In the discussion of such a case as this the legal propositions should first be given. This motion for a change of venue should not be granted unless the showing is made very strong. Another proposition is that the parties who come asking for the change must have the preponderance of the evidence; if there be an equal balance then they lose their case. The rule is that the defense shall establish its point by the preponderance of the evidence. The question is, is the prisoner entitled to a change of venue on account of the local prejudice? And the defendant presents in stereotyped forms affidavits saying that a fair trial could not be had. The defense has presented to you a mass of affidavits, but there are some among them who are people of this country. The others belong to the migration class; that is, they are not people here. They are not people who cannot speak for Richland County. Upon this line is the one point for the defendant. Such affidavits declaring nothing but the belief of the affiants do not weigh in the decision of the change of venue. The motion must be accompanied by affidavits based on facts, not beliefs; knowledge, not opinions.

Judge Crawford cited a number of cases throughout the United States showing that it is insufficient to obtain change on such opinions and beliefs. If such were the case a change could be procured from one county to another, and in this manner the case could be carried on indefinitely. The law must be resolved on principle and not merely on the opinions of everyone. Our Supreme Court has repeatedly decided that when a jury has been put on its voir dire and declares that its mind is unbiased that juror is perfectly competent to sit on the case.

It was on account of these beliefs and opinion affidavits that the Courts of South Carolina, in *Watts vs. Williams*, declared, in 1823, that a change of venue can be granted only when accompanied by affidavits in which facts are given. It is the jury of Richland County that is impeached before they are put on their voir dire? Because a few of the friends of the victim subscribe to a monument fund should it then be said that a fair trial could not be gotten in Richland County? According to the case reported in 5th New Mexico the mere statements of the attorneys of the defendant should have no weight with the Court. That the venue will not be changed merely on the statements of the prisoner and his friends that he can not get a fair trial is specifically stated by Bishop. We have shown to the Court by affidavits that over one-half of the jurors drawn in this Court are from the county districts of the country; therefore, the articles published in the Record could have no effect on them; as this paper has no country circulation. The accused has made objection to the effect that the jury made up of improper jurors. By the change of the law this is eliminated in such a manner that a juror who is biased cannot sit on a murder trial.

The affidavits of the prisoner relate to the time when the blood of the victim was still on the ground, but now, after six months have elapsed, to say that the people still harbor the malignancy of vengeance—never! This people in the rush of other occurrences have almost forgotten this trial. They bring extracts, written by a single editor, and try to show that this individual has influenced the jurors of this county. All of the witnesses for the State say that a fair and impartial trial can be had. Four hundred and thirty-one affidavits have declared that if there was any feeling against James H. Tillman it has disappeared.

Mr. Crawford then read the letter from Col. W. H. Bellinger which says that Tillman can get a fair trial. This is the only representative citizen who has made an affidavit for the defense, and he says that Tillman can get a fair trial. There has been talk of violence in the county. Why, Col. Tillman walks in and out of this Court room with as much safety as in his mother's home. The sworn statement of Senator J. Q. Marshall shows that there is no feeling in every part of the State as in this county. There was some feeling against Col. Tillman at the time of the killing, but this has subsided now.

It has been shown that notwithstanding the fact that Mr. N. G. Gonzales fought the accused in his race for Governor last summer, Col. Tillman received more votes than any other candidate. The defense has presented you about fifty affidavits from citizens

of Lexington County, who declared that a fair trial could not be had in Richland County. They say that they do not wish to do with the case. The defense must show beyond a doubt that a fair trial cannot be had. Must it be shown by the number of affidavits? Then we have the affidavits of the jurymen and the affiants? Then we have them. By their representative character; by the varied occupations? If so, then the prosecution has them.

They want to show that by a few newspaper clippings that a fair trial cannot be had. All of the preachers of Columbia have given affidavits showing that Tillman can get an impartial trial. The defense wants to contradict the statement by showing that on the Sunday after the shooting prayers were offered to spare the life of this useful citizen.

Mr. Crawford then read the names of some twenty physicians of the county, who mingle with the masses more than any other class of citizens, all of whom say, without an exception, that the accused can get a fair trial here. To contradict the affidavits of the physicians, railroad men, about one hundred and fifty merchants, and the farmers, who swore that a fair trial could be had. There are only 1,300 qualified jurors. Both sides are limited to the same number in the drawing of the jury. The other side present 331 affidavits and we have 421; this makes 752 of the citizens whom Tillman would not have to fear 331 who have made affidavits for the defense are not prejudiced against him and the 421 who have stated specifically that a fair trial can be had.

The 500 remaining can be put on their voir dire and I am sure that an impartial jury can be gotten. The rule of the Court is that you cannot decide whether an impartial jury can be sworn in until they are brought up and put on their voir dire. We challenge the affidavits of Mr. W. P. Martin and others, in which they state that the newspapers have published articles which were calculated to prejudice the minds of the people and to hold the defendant under public censure. Mr. Crawford went on to say that the newspapers published here, and especially the State, had been especially temperate and mild in their reference to this case.

### COL. P. H. NELSON'S ARGUMENT.

Col. P. H. Nelson then spoke in support of the demand for a change of venue. Col. Nelson spoke in a most eloquent manner for one hour, going over the legal phrases which are involved in the case. He began by saying that the defendant is entitled to a fair trial and an impartial jury. The State is fair and impartial and is guaranteed to every man, and he proposed to show that a fair trial could not be gotten here.

We do not rely on the affidavit of the defendant, but on 350 affidavits of citizens of Richland County. The State has the right to change of venue on the following grounds: "The Circuit Court shall have the power to change the venue in all cases, civil and criminal, pending therein, and over which said Courts have original jurisdiction, by ordering the trial to be removed to another county in the same circuit. The application for removal must be made to the Judge in writing, and the same may be granted on the credit of belief, or by the solicitor of the circuit, or accused, supported by affidavit that a fair and impartial trial cannot be had in the county where such action is to be taken." The State shall have the right to make application for a change of venue that a defendant has in cases of murder, arson, rape, burglary, perjury, forgery, or grand larceny. Provided, no change of venue shall be granted in such cases until a true bill has been found by grand jury. Ten days' notice of such application in civil and criminal cases shall be given to the adverse party, and if a change is ordered it shall be to a county in the same judicial circuit."

In *State vs. Coleman*, S. C., 238 it is held that a motion for a change of venue presses itself to the discretion of the presiding judge. The change of venue was granted by the Circuit Judge, the Supreme Court saying: "While here upon very general affidavits as to the improbability of a fair trial in the county in which the crime was committed, the Court expressed his willingness to transfer case to another county in the circuit except Pickens, where there would be no term of Court."

In another unreported case Judge Kershaw granted a change of venue, in Fairfield County, on the affidavits of three citizens.

In the case of Crawford, in this county, the change was granted to Kershaw County because of prejudice caused by the newspapers.

Mr. Nelson referred to the manner in which Judge Andrew Crawford had read this affidavit, saying that Mr. Weston was elected in hard times. Mr. Nelson wanted the Court to know that these hard times referred to was the bitter fight between the Tillmanites and Conservatives. Although he belonged to the latter side, he was not afraid to say that such a state of feeling existed now and that no one did more to cause this than the late editor, N. G. Gonzales.

Some witnesses were put on the affidavit of Judge O. W. Buchanan, in which he referred to a conversation between Mr. Nelson and County Auditor W. H. Gibbs. Mr. Gibbs had always been a close personal friend to Mr. Gonzales and he did not blame him for his bitter feeling towards Mr. Tillman. Your Honor will also take judicial cognizance of the Act of 1902 at page 1069, where the duty is devolved upon the county treasurer, the county auditor and clerk of Court of Common Pleas and General Sessions of selecting and drawing jurors in the Circuit Courts of the State. Mr. Gibbs, being county auditor this duty devolved upon him.

In the case of *State vs. Sullivan*, 39 S. C., 406. The Judge on being convinced that a fair trial could not be had by reason of the interest of one of the officers who drew the jury—the Court saying that it was well settled that the jurors must be returned by impartial and disinterested officers—and the duty of the officers whose duty it was to return the panel was a relative of the deceased, and impartial, and as some time would elapse before his term of office would expire, and the defendant being entitled to a speedy trial, a change of venue was ordered.

Attention was called to the fact there were no cases reported in South Carolina Courts in reference to newspaper publications. In New York several cases were cited where changes of venue were given on account of newspaper prejudice. The affidavits of Mr. A. E. and Mr. W. E. Gonzales do not deny that on the day after the notice for change of venue that there was published an editorial entitled "Only Criminals Fear a Fair Trial." This was done only to affect the minds of the people. The prosecution says that the ministers did not refer to the case from the pulpits. Mr. Nelson then read several extracts from the prayers that were offered on the Sunday after the shooting. Every single affidavit presented by the defense says that Tillman cannot get a fair trial and they also state the reason why he cannot get a fair trial.

Washington A. Clark has called Gonzales a martyr and Tillman an assassin. The same is true of John J. McMahon. The newspapers have prejudiced the minds of these people by publishing numerous facts in regard to this case. The defense has not only made reference to these facts, but has presented these clippings to the Court.

Mr. Justice McCall of New York, in the case of *People vs. Bullett*, granted a change of venue on the ground that the newspapers had prejudiced the minds of the people so much against the prisoner. These cases are cited to show how similar cases have been treated in other States. South Carolina has several similar cases to the present, showing that changes of venue have been granted on the ground that newspapers are sufficient to prejudice the minds of people so much as to prevent a fair trial.

In closing Col. Nelson said that it had given him no pleasure to make the criticisms of those with whom he had formerly been friends. He was always willing to give the deceased editor the credit of belief in the right and did not now want to change his course.

### MR. BELLINGER'S ARGUMENT.

The next argument was that of Ex-Artillery General G. Duncan Bellinger. A thorough review of the case was made by this distinguished attorney, who began by referring to the monument presented Wednesday by Col. George Johnston for the defense. He said:

Has there been any fact presented by which you can form an opinion that the defendant cannot get a fair trial in this county? The same legal principle which prevails in a jury trial, that the State must prove its case beyond a reasonable doubt, does not prevail at all in this judicial investigation. The question is: Can James H. Tillman receive a fair trial in Richland County? It is a well-known principle of law that a defendant must be tried at the place in which the crime was committed. In older times, when the custom for the witnesses of a crime to decide on the case. The idea of change of venue is a comparatively new thing in law. Col. Johnston said in his affidavit that two-thirds of the affidavits made by the defense were those of well-known citizens of Richland County. This argument is illogical and a Circuit Judge knows one man like another and supposes them all to be fair-minded.

When the defense says that Mr. W. A. Clark, J. J. McMahon and W. H. Lyles affirm that the defendant is a murderer this does not bear them from saying he can receive a fair trial here. They do not allege that these gentlemen would lie; that their prejudice has carried them so far that they cannot tell the truth. The prosecution does not make the allegation that life three hundred and fifty men who made affidavits for the defense would give Jim Tillman anything but a fair trial. The four hundred and fifty affidavits for the defense, who swore that Tillman could get a fair trial, certainly would give him just what he deserved.

The Gonzales brothers and James A. Hoyt, who were so much attached to the dead editor, would not sit on the jury.

## THRILLING STORY

### From the Records of the Corps of Cadets of the VIRGINIA MILITARY ACADEMY.

### In the War of Southern Independence. The Gallant Charge of the Boy Battalion at New Market.

It is a record unexampled in history, this story of some two hundred and twenty-five boys, under 18, participating in a sanguinary and hard-fought battle, where the service they rendered was so timely and effective, that it materially contributed to the fortunes of the day. In the month of May, 1864, three battles were fought on the soil of Virginia. Two were on the eastern side of the Blue Ridge Mountains, and one in the famous Valley of the Shenandoah, where still walked the wraith of Stonewall Jackson, dead at Chancellorsville by the May previous. The gigantic conflicts of the Wilderness and Spotsylvania Court House, May 5 to 7 and May 8 to 18, which fill so large a space on the canvas of one of the world's greatest wars, would inevitably throw into the shade the small battle in the valley, but for the romantic circumstance that on the Confederate side it was partly fought by the cadets of the Virginia Military Academy. Yet the battle of New Market was in itself no insignificant factor in the defense of Virginia and the protection of the Confederate Capital.

The Federal general, Sigel, who had established himself at Winchester, in April, had a force of about 8,000 infantry, 2,500 cavalry and three or four field batteries, and was making ready for a forward movement. To meet him, Gen. Imboden, of the Confederate cavalry, who was in camp in Rockingham County, over seventy miles from Winchester, advanced with a force of 1,492 men and 100 scouts, who operated in Sigel's front and rear. The "reserves" of Rockingham and Augusta counties, about 1,000 men, were notified to be ready at a moment's warning to join Imboden, and the same order was sent to the commandant of the Virginia Military Institute.

Imboden's special tactics granted him a respite of several days, which enabled Gen. Breckinridge to reach him from South-west Virginia with 2,500 veteran troops. Breckinridge then took command, and the battle of New Market was fought on the 15th of May. The scene of the conflict, a little village with a population of one thousand souls, nestled between the mountains and the river, in Shenandoah County, its undulating ground smiling with orchards and gardens and fertile fields of grain.

The cadets left the Institute on the 11th of May. They were up before daylight making their preparations, and, after an early breakfast were on the march. With the ardor of youth they went joyfully to the fray. One of them, ten years later, recalled the sensations of the mingling of persons at that moment of his life. "The boys in their gayety and exuberant spirits shouted and sang and whistled as they swung along, all of them joining, now and then, in the chorus of some favorite air. Arrived at Staunton they had yet forty miles to make before reaching New Market. It proved a long and toilsome march altogether, of four days' duration, through falling rain and wet fields and muddy roads, but the battle day dawned bright and beautiful, though a terrific thunder storm came later, mingling its terror and grandeur with the thunder of the guns. The boy battalion on their arrival were quickly in line, having been assigned a central position so as to be as little exposed as possible. The gallant, Kentuckian J. P. command, gentle and brave, and one of the handsomest men to be found in either army, on whom had fallen the mantle, and with it the spirit, of Stonewall Jackson, looked tenderly upon the youths, called from their studies to face a field of battle, and would fain have spared them the fiery ordeal.

Riding up to the "cadet corps, just before the engagement, his graceful and commanding figure a conspicuous object to the held, Gen. Breckinridge said: "Young gentlemen, I hope I will not have to call upon you to-day, but I know if I should be obliged to do so that you will do your duty." And nobly did they respond to this expectation. The battle was progressing successfully for the Confederates, though stubbornly contested by the Union forces, when a terrible fire met Breckinridge, who was on an elevated ground, doing much damage to the Confederate infantry. It was now, at about 2 o'clock in the day, that the cadets were called into action, though they had already suffered several casualties from random shells.

Under the concentrated fire of six guns, plunging through thorns and bushes and over fallen logs and stumps of trees, they were ordered to the 62d Virginia regiment some two or three minutes, keeping their formation with wonderful coolness while the battery was doing its deadly work upon their youthful ranks. When

the order was given to charge, the encounter was soon over, though the gunners stood gallantly to their guns until overpowered. A cadet mounted a caisson and waved from it in triumph the Virginia State flag, the colors of the Institute, rousing a wild yell of triumph from the Confederates.

There was then a general advance along the whole line and the battle was won. The cadets, out of two hundred and twenty-five lost eight killed and forty-six wounded. Gen. Shipp had been struck down at a critical point in the charge and Capt. Henry A. Wise, one of the assistant professors, a young man not much over 20, a nephew and namesake of Gen. Wise, had fallen in the sake of Gen. Wise. Capt. Wise told how, amid the noise and excitement, a tap on the shoulder arrested his attention, and the news came from a comrade that their colonel had fallen and he, as senior officer, must take his place. The little confusion that had arisen when Gen. Shipp was carried to the rear was soon checked and Capt. Wise had his command well in hand, showing conspicuous gallantry, coolness and decision. When the battle was over Capt. Wise had eight bullet holes in his clothes, though he could not remember how any of them came there. And he relates that both the tails of his long military coat were cut away. In the two large pockets were his pipe and tobacco pouch, and the pipe was broken, but a piece of it remaining. One of his fingers was temporarily injured yet he could not recall how or when.

And to his memory afterwards the action seemed to have occurred but a few minutes, though he knew that it had been much longer. Of one thing at the end, however, he had a vivid realization—that was the need of a new pair of pants, as his own were so cut and torn. For this purpose he went over the battlefield to find what he lacked on the fallen forms of his erstwhile foes. He consoled himself for any impiety in "robbing the dead" with the reflection that he was taking what was no longer of any use to the lifeless wearer. Being a very tall young fellow, it was some time before he found a man of his own height, and then he discovered, as he attempted the task, what a difficult thing it is to get anything off of the rigid forms of the "golden youth" of the Old Dominion. And among the cadets there were representatives also of the best blood of some of the Southern States. Some years after the war a Northern man came to the

saying to the commandant: "Sir, I was an officer in the Union army at the battle of New Market and was a witness to the bravery of your cadets, and I resolved then that if I ever had a son he should be educated in this school of heroes!"

Among the cadets at New Market was a young Israelite, born in Richmond, Va., now the world-renowned sculptor, Sir Moses Ezekiel, of Rome, Italy. To him, most appropriately, was consigned the execution of the monument to his comrades, the corner-stone of which was laid the 15th of May last, and which will be unveiled June 23. It occupies a beautiful position on the parade ground of the Institute, in front of the entrance to the Jackson Memorial Hall. At the cemetery of the Institute are the graves of the young heroes whose fame the monument commemorates.

"Sleeping, but glorious,  
Dead in fame's portal,  
Dead, but victorious;  
Dead, but immortal!  
They gave us great glory,  
What more could they give?  
They have left us a story,  
A story to live!"  
Kate Mason Rowland.

## PULLED ARMS FROM SOCKETS.

### Strong Man Badly Injured in Trying to Outpull Horses.

A New York dispatch of Tuesday says: Sebastian Miller, a professional strong man, will be crippled for many weeks as a result of the accident at the Plattdeutscher Volksteat at Ridgewood park when two horses he was trying to pull together almost tore his arms from their sockets. It is likely that he will never regain his former strength.

The act, which Miller attempted was to strap himself to two powerful horses and drag them together by sheer muscular force. Two big brewers' horses were taken to the park for the test.

Miller strapped his hand into loops that extended to a stout harness around the horses, one on each side of him. A great crowd watched him as he strained every muscle of his powerful body, but the horses did not budge.

The crowd cheered, and the horses, frightened by the noise, started to move in opposite directions. The grinding of the giant's bones could be plainly heard, his face was drawn with pain until, when he could bear it no longer, he called for help. Men rushed upon the platform and stopped the horses.

It was not too soon; for the man's arms had been pulled from the sockets and the flesh broken, letting thin streams of blood course down his arms. A physician was soon with him, and after putting the dislocated bones back in place he allowed his patient to go home. Now he is unable to use either arm, and the doctors say it will be a long time before he will be well.

## ENDS HIS LIFE.

### A Doomed Negro Murderer Cheats the Gallows

### BY TAKING POISON IN THE JAIL

### Where He Was Closely Confined

### Awaiting the Vengeance of the Law for His Heinous Crime.

John Brownfield, the negro who murdered Deputy Sheriff Scurry at Georgetown in September, 1900, and who was to have been hung last Friday, committed suicide in his cell on Tuesday, June 22, by taking poison. The Charleston Post correspondent says it is not known how he obtained the stuff with which he killed himself. There has been some talk of the possibility of the condemned man taking his own life and cheating the gallows, but there was little expectation of his being able to accomplish it. Brownfield made a remarkable fight to escape the gallows and carried his case to the Supreme Court of the United States. He had exhausted every resource to save his neck, when finally he took his own life in the very shadow of the gallows.

Brownfield killed Deputy Sheriff Scurry on September 30, 1900, resisting the deputy's undertaking to arrest him in a barber shop. The killing caused great excitement and a posse went to the woods and captured Brownfield and brought him to jail. There was some talk of lynching and the negroes began to gather from the surrounding country to prevent any such proceeding, and afterwards with the purpose of rescuing the prisoner from the jail. The situation became very bad and there was imminent danger of a race war, when Mayor Morgan appealed to Gov. McSweeney to order out the militia. The Georgetown companies and Major Schachtel's command from Charleston were quickly brought to the scene and their presence established order and the trouble quickly subsided.

Brownfield was tried and convicted in December, 1901, and was sentenced to hang, but he appealed to the Supreme Court of the State, which sustained the judgment of the lower court. His case was then carried to the Supreme Court of the United States.

A Florida Tragedy.  
W. B. Hunter and Mrs. Cepha Eiland were killed and Cephas Eiland badly wounded in a shooting affray at Spring Lake Fla. Wednesday night. Eiland and Hunter are brothers-in-law, but were not on good terms. Hunter was in Brooksville all day Tuesday attending Court. He left early in the evening and instead of going directly home went to Eiland's. What occurred there is told by Eiland, the only survivor of the tragedy. He says Hunter being under the influence of whiskey, began using very profane and abusive language in the presence of Mrs. Eiland. Eiland ordered him to leave. He pulled his pistol and began firing at Eiland, who returned the fire. Mrs. Eiland sprang between the two while they were shooting and was instantly killed in the presence of her three little children. After emptying his pistol Hunter ran a short distance and died. Eiland is badly wounded.

## Boston Menaced.

### A New terror now menaces Boston. Somebody claims to have discovered, by scientific methods, that the city is slowly sinking to sea level. It is asserted that there has been a drop of about a foot in the last ninety years, and that the depression is steadily going on. But, in view and the weight of Boston intellect, the wonder is not that the city is being mashed under, but that it has held up so long.

## Buildings Destroyed.

### The most spectacular demolition of buildings in the history of the world was begun by the Pennsylvania railroad Wednesday in the very heart of New York. Four hundred buildings, including three churches, a hospital and a charitable home, will be made one grand ruin in order to erect a mammoth station in connection with that road's tunnel project from New Jersey to Long Island.

## Another Lynching.

### A mob of fifty masked men Thursday morning hanged Jack Harris, a negro, to the porch of a building in the suburbs of Clarendon, Ala. Harris assaulted and seriously injured John Coburn, a white farmer, who lives about eight miles from Clarendon. The assault was committed Sunday and Harris captured the following. The mob forcibly took him from the custody of the sheriff and hanged him.