

The Herald and News.

VOL XLIV. NO 29.

NEWBERRY, S. C. TUESDAY APRIL 9, 1907.

TWICE A WEEK, \$1.50 A YEAR

FREEDOM GIVEN

DR. MAXY LEE

DARLINGTON MAN WHO KILLED HIS FATHER IS PARDONED.

Quite a Celebrated Case—History of Homicide and Trial Given by Defendant—Judge Benet's Letter.

The State 7th.

Dr. Maxey G. Lee of Darlington was released from the state penitentiary yesterday after he had served nearly seven years of the life sentence imposed upon him by the jury for killing his father, Dr. H. J. Lee. When Dr. Lee entered the penitentiary he was a young man, strong and healthy, despite his excesses; when he left he was broken in health and spirits and had aged very perceptibly.

The story of Lee and his trial and conviction is a most interesting one, familiar to many in the Pee Dee section of the state, who followed its history from start to finish. On October 5, 1899, Dr. Lee and his father, Dr. H. J. Lee, became involved in a quarrel at their residence about 10 miles out from Darlington. The two had lived alone for a number of years and, according to the statement made by Maxey Lee, both were in the habit of drinking together. Lee was tried 20 days after the homicide and it is said that his conviction was due not to a sentiment against him but only because of a feeling that he should be punished severely on account of the crime. His uncle, O. D. Lee, who was one of the prosecutors, at one time, refused to recommend the first petition for pardon, but afterwards signed the second petition, thinking that the nephew had been punished sufficiently.

There have been many attempts to get a pardon for Lee. The first petition was presented to Gov. Ellerbe and after that followed papers to Gov. McSweeney and Gov. Heyward. In all cases the petition was not granted. In the case of Gov. Heyward a commission of three, consisting of Drs. J. W. Babcock, D. S. Pope and Samuel Harmon were appointed to examine his habits and sanity and the opinion was that Dr. Lee was still addicted to the use of drugs to a certain extent. Judge Benet, who tried the case, refused to recommend the pardon but the late J. Monroe Johnson, who was solicitor at the time, recommended that it be granted.

Most of the history of the case is told in the petition filed by Dr. Lee himself before the pardon board and before Gov. Ansel. It is as follows: To His Excellency M. F. Astel, Governor of the State of South Carolina:

Your Petitioner respectfully shows that on the 6th day of November, 1899, in the court of general sessions for Darlington county, in the state of South Carolina, he was tried and convicted of the crime of murder with the recommendation to the mercy of the court, and thereupon was sentenced to the state penitentiary for the term of his natural life and is now confined herein.

That on the 5th day of October, 1900, at the residence of your petitioner and his father, the deceased, they then lived and had lived for many years, practicing their profession together in perfect harmony and enjoying to an unusual degree the affection that naturally exists between father and son, your petitioner and his father, being absent for several days under the influence of whiskey, by reason of which your petitioner was deprived of his reason and rendered temporarily irresponsible for his acts, he involved in a difficulty in which his father was killed by your petitioner without provocation or any motive whatsoever. That your petitioner has no distinct recollection of the circumstances attending the killing and can sign no motive whatever for the same and can explain the killing only on the hypothesis that he was temporarily crazed by the extended and protracted use of whiskey.

key.

That your petitioner was brought to trial just one month after the killing while he was still suffering from the shock of the horror in which he was involved and from wrecked nerves, caused by drinking as aforesaid, which continued under the advice of the physician in charge after your petitioner was arrested and imprisoned, because he was physically unable to abruptly discontinue the use of stimulants. That by reason of the continuous physical and mental derangement aforesaid, your petitioner was totally incapable either before or before the trial of formulating a rational defense, and is now informed that he positively refused to be guided by the advice of counsel and interposed the plea of accidental killing over their earnest protest. In confirmation of these statements your petitioner prays reference to the letter of Robert McFarlane, one of his counsel, and to the physician's certificate offered at the trial.

In support of this petition reference is craved to the recommendation of the late Solicitor J. M. Johnson, filed herewith, and to the petition signed by J. M. Spears, Esq., now solicitor of the fourth judicial circuit and native resident of Darlington county, and by the officers of the town and county of Darlington and members of both branches of the general assembly from the county of Darlington, from all the counties of the fourth judicial circuit and from adjacent counties, by the lieutenant governor and secretary of the state, who are residents of the counties adjacent to and recently formed partly from the county of Darlington and by the speaker of the present house of representatives and his predecessor.

And for reasons why the petition should be granted, your petitioner respectfully shows that the offense of which he has been convicted was committed without premeditation, without a motive and without malice aforethought, and that did not constitute the crime of murder, and more than adequate punishment has already been inflicted on your petitioner and the law has been fully vindicated.

Wherefore your petitioner respectfully prays, the premises being considered, that your excellency will in the exercise of your great clemency grant unto your petitioner a pardon of his said crime, a release from said imprisonment and a restoration to the rights of citizenship.

M. G. Lee,

Petitioner.

Judge Benet's report on the case was as follows:

To His Excellency, Gov. Heyward. Dear Sir: A similar petition was submitted to Gov. McSweeney, and at that time I stated my reasons for refusing to recommend the pardon prayed for. The present petition and accompanying papers furnish me no grounds for changing my opinion. Dr. Lee was justly convicted for the murder of his father, an aged man. The jury that found the verdict recommended him to mercy, thus sparing his life, but they had no doubt nor have I now that he murdered his father, and yet they mercifully found the lesser verdict. He was ably defended, he had a fair trial, the evidence of guilt was overwhelming and I can not recommend his pardon.

W. C. Benet.

Judge Benet is now in Europe and no report could be obtained from him at this time, but it is understood that he would not change his opinion.

A letter from Gov. Heyward, written at the request of the pardon board, stated that he had appointed a commission who examined into the matter and after they reported he declined to take any action although on the strength of the petition alone it was his inclination to act faithfully.

After Gov. Ansel had decided to adopt the recommendations of the pardon board yesterday the papers were turned over to Mr. R. M. McCown, the secretary of state, who knew Lee well and sent over to the penitentiary. The news of the pardon spread rapidly and there were many comments on the case which had almost been forgotten by Columbians.

ATTACKS RIGHT OF INCOME TAX

CONSTITUTIONALITY OF LAW IS TO BE TESTED.

Means \$20,000 in Revenue—The Plaintiff is Mr. J. O. C. Fleming of Laurens, a Prominent Merchant and Banker.

The State, 7th.

A hearing will be held before the state supreme court on April 27 on the constitutionality of the income tax law. The hearing will come up on petition of J. O. C. Fleming, a prominent merchant and banker of Laurens, whose attorneys Wednesday secured a temporary injunction from Chief Justice Pope restraining C. A. Power, county auditor of Laurens county, from taking any further steps toward enforcing the terms of the said act against the petitioner until the question of its constitutionality has been determined.

The hearing will be held in the supreme court room at Columbia at 10 o'clock in the morning. Attorney General Lyon and Assistant Attorney General DeBrull will represent County Auditor Powers, while Messrs. Dial & Todd of the Laurens bar will represent Mr. Fleming.

This act raises a question of much importance to South Carolina and jeopardizes about \$20,000 of the state's annual revenue from taxes, it being estimated that this act would bring in at least that much this year.

The petition for injunction sets forth that the petitioner is the owner of considerable property, real, personal and possessory, and is engaged in the business of merchandising and farming, and from his property and vocations derives an annual income in excess of \$2,500 and is, therefore, amenable to the provisions of the income tax act; that petitioner has duly made a return according to law of all of his said property for the year 1906, which will constitute a lien upon same for all state, county, school and municipal taxes.

That the respondent, C. A. Power, claims the right under the income tax act, approved 5th day of March 1897, to require of petitioner a return, under oath, showing the amount of gross income received by petitioner during the year ending Dec. 31, 1906, as rent, interest, salary, etc., from any profession, trade or employment and from other sources, deducting therefrom only the expenses incurred in carrying on his business, occupation or profession, but not including remuneration for personal supervision or maintenance of family, and also not including any taxes paid by petitioner upon property, real, personal or possessory, owned by him during the said period and from which the said gross income is derived; that respondent asserts that he has the right upon the failure of petitioner to make a return as required under the income tax act to make the same for him in such an amount as appears just from the best information obtainable; that petitioner has been served with notice that he has been assessed on an income of \$3,000, the tax on which will amount to \$30, and that respondent threatens to charge up against him on the books kept for that purpose an additional sum of 50 per cent. of the said tax as a penalty for failure to make return.

That the said income tax act, in imposing a tax upon petitioner's income and in requiring a return from him and in imposing a penalty upon him for failure to make return is illegal, unconstitutional, null and void, in that it is in violation of section 1 of article 10, of the constitution of South Carolina, which provides for a uniform and equal rate of taxation to be imposed so as to secure a just valuation for taxation of all property, real, personal and possessory, and also for a graduated tax on incomes; whereas, said income tax act does not impose a uniform and equal rate of assessment and is not graduated according to the sense and intent of the constitution; that in imposing an income tax upon the income of

petitioner in excess of \$2,500 and not upon other persons, whose income is less than that amount makes an unjust and illegal discrimination; that the exemption provided for in the said act is illegal, etc., in that it is purely arbitrary and does not bear a just and proper relation to the classification one and is without the sense of the constitution; that the tax imposed by this act is unconstitutional, null and void, in that it is laid upon the property of petitioner without a proper assessment and ascertainment of the actual value thereof, and hereby violates section 29, of article 3, of the constitution; that the act is unconstitutional in that the rate of tax imposed on each dollar of income between \$2,500 and \$5,000 is 1 per cent., and on each dollar of income from \$2,500 to \$7,500 is 1 1/2 per cent., and on each dollar from \$2,500 up to various other amounts named is a different rate or percentage, and therefore the attempted graduation is unequal, unjust and discriminative; that the act is unconstitutional in that it does not provide for a deduction of state, county, school and municipal taxes paid on the property from which said income is derived, or a deduction from the gross income of the amount of rents received from real estate and personal property and interest and dividends from property upon which all other taxes have been paid, and, therefore, it is not only not uniform and not equal and not graduated in the true sense of the constitution, but it is unjust and illegal double tax upon petitioner's property; that the act is void because it violates section 5, of article 1, of the South Carolina constitution, and the 14th amendment of the constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, nor denied the equal protection of the laws, etc., in that it deprives petitioner of his property without due process of law and denies to him the equal protection of the law by reason of the arbitrary and capricious exemptions, classifications and attempted graduation which it provides.

That pursuant to the provisions of the income tax act the respondent has not only required a return from petitioner, which has been refused, but threatens to charge up to him a penalty of 50 per cent. of the income tax entered against him for failure to make return; that respondent threatens to charge up and enter the same upon the various books kept for that purpose and to otherwise proceed with his duties under the said act, all of which proceedings on the part of the respondent will violate petitioner's constitutional rights and will work great hardship to and inflict upon him irreparable injury, etc., and leave him without adequate remedy at law.

THE NATIONAL SCHEUTENFEST

Shooting Clubs From Every Part of the Union and Probably From Germany Will Take Part in the Great Fest Which is to Be Held May 6 to 14.

Charleston, April 6.—President E. H. Jahuz of the National Schuetzenbund, which will hold its fifth triennial national shooting festival in this city, May 6 to May 14, has received a letter from President Roosevelt, commending the purposes of the organization and the service it is doing for the country in raising the standard of marksmanship among citizens. The president's letter is as follows:

The White House,

Washington, D. C.

My Dear Sir: I wish you hearty good luck in what you are doing for rifle shooting. The National Schuetzenbund may perform a real service to the United States by working in the future as in the past for the promotion of marksmanship.

Our country has a regular army of such small size (though I may say in passing, of such trained efficiency as to be one of the best national assets) that in the event of war the great bulk of our forces will have to consist of volunteers. Accordingly it is

of prime importance that there should be a thorough familiarity with the use of the rifle among those of our people from whom the ranks of the volunteers would in time of war naturally be filled.

Therefore in helping raise the standard of marksmanship among our people and in popularizing rifle shooting the Schuetzenbund is performing a great service for which the country is your debtor.

Sincerely yours,

Theodore Roosevelt.

Will Fire First Shot.

The president will fire the first shot at the festival, discharging a rifle, carefully sighted and secured in position, by electric connection leading direct from the White House to the target box at the Schuetzenplatz at Charleston. The president was invited to attend the festival in person but his engagements would not permit him to accept.

This will be the first national shooting festival of the association which has ever been held in the South. The determination to hold the festival in Charleston was made in 1904 at the annual meeting in New York, upon the invitation of the German Rifle Club of Charleston, which is the oldest organization of its kind in the United States, having celebrated two years ago its golden jubilee, on the 50th anniversary of its establishment.

Kaiser an Honorary Member.

The German emperor, William II, is an honorary member of the Charleston club, this being the only association in the United States in which he has accepted such membership. He was elected in place of his grandfather, the first emperor, who was elected shortly after his proclamation as head of the German empire. The club has six French rifles which were presented by the old emperor, trophies of war captured in the Franco-Prussian conflict. These rifles will be exhibited in the grand parade with which the fest will be opened.

Elaborate preparations have been made for the shooting festival and for entertainment of the many hundreds of visitors who are expected in Charleston for the occasion. The grounds of the rifle club, occupying a beautiful section of the suburbs, on the banks of the Ashley river, have been put into fine condition, the most approved target ranges have been erected and the buildings have been arranged for accommodation of the ceremonial and festival features of the gathering. The membership of the local club has been increased to more than a thousand in anticipation of the national meet and all elements of the community have joined in the effort to make this festival the most successful that has ever been held by the national association.

An Extensive Prize List.

The prize list for the marksmen is very extensive, the medals and purses being very numerous and valuable. Altogether about \$20,000 will be hung up in purses at the various targets besides numerous medals of honor. For these prizes and honors it is expected that some of the most expert riflemen in the United States will compete and some very close contests are assumed.

Of the 110 clubs which are members of the national association, nearly one-half have already signified their intention of sending representatives to the Charleston meet, and it is estimated that there will be an attendance of at least 5,000 riflemen from every part of the country. Seventeen clubs in New York will send delegates; 10 in California will be represented; one in San Francisco having voted a special prize of \$250 to be shot for at one of the targets. A number of clubs from Ohio will send marksmen and from the south a large number are expected. Arrangements for the accommodation of these visitors in the most comfortable manner have been made and there will be many entertainments in their honor. The New York riflemen have chartered a steamer for the trip and have engaged almost the entire accommodation of one of the large hotels.

Dates of the Shooting.

The shooting will begin in the afternoon of May 6, and will continue

through May 11, and also will be held on May 13. Throughout the day, from 8 a. m. to 7 p. m., the rifles will be busy, with an hour's intermission at noon. The principal targets at 200 yards will be: Association targets for members only; honor targets; Columbia; stitch targets; Germania. There will also be special targets for the ladies.

At the Columbia target the association guarantees three cash prizes of \$100, \$200 and \$150, besides a number of small prizes, which, it is estimated, will assure practically every one making a fair score a prize. At the Germania target there will be \$1,000 hung up in 62 prizes, the first prize being valued at \$200. At the ring target there will be prizes of the same number and value, \$500 in prizes is offered at the standard American target, and \$1,000 at the public point target, divided into 101 prizes. The king's target, at which the shooting will be for the king of the fest will have a total cash value of \$300. The eagle target will have a total value of \$150. The rules and regulations for the shooting have been carefully drawn. They are according to the usual standards for these events.

Elaborate Social Features.

The social features of the gathering are to be especially elaborate and there will be some form of entertainment or other interest offering all the time. Numerous excursions will be run to points of historic interest or amusement in the vicinity of Charleston and many private entertainments will be given in honor of the visitors.

The festival will be opened with a grand parade on the first day of the meet, which will be participated in by many hundreds of riflemen in their picturesque gray and green uniforms. A series of very handsome allegorical floats will be drawn in the parade.

It is thought possibly that some of the rifle clubs in Germany will be represented at the festival.

The railroads have made special rates for the occasion and excursion tickets will be on sale in all parts of the country.

A Growing Fellowship.

Laurens, S. C., April 6, 1907. Editor Herald and News:

Dear Mr. Editor: I have been a close reader of the accounts of Newberry's great fest and the incidents connected with and resulting from the same, and while deeply deploring the loss to so many of valuable help, much of which cannot be realized, I am conscious of a growing spirit of fellowship among Christians of different opinions and welcome it most heartily. While we know that out of the apparent destruction much material good will come who can doubt that a closer sympathy and broader charity will prevail? Hoping to that end.

A Member of St. Luke's.

BODY EATEN BY BUZZARDS.

Remains of a Negro Man Found in Salkatchie Swamp in Barnwell.

News and Courier.

Barnwell, April 4.—News has just reached here that a white man and negro woman, claiming to be doctors, hired a negro man to take them from several miles below Barnwell to Williston, some fifteen miles above Barnwell, about one week ago, and that the negro man has not been seen since, until his body was found in Salkatchie swamp today almost entirely eaten up by buzzards. The man and woman were last seen in Williston, where they said they were going to Augusta, Ga., and claimed to be from Sumter.

A woman likes to worry for fear her jewels will be stolen when her husband makes a fortune and gives them to her.

A mighty satisfactory thing to a woman is the way she can understand a thing without thinking about it.