

# The Watchman and Southron.

THE WATCHMAN, Established April, 1866.

"Be Just and Fear not—Let all the ends Thou Aims't at be thy Country's, Thy God's and Truth's."

THE TRUTH, Established June, 1866.

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## The Watchman and Southron.

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## INCOME TAX RATIFIED.

### HOUSE VOTES ALMOST SOLIDLY FOR AMENDMENT.

The Bailey Federal Income Tax

Amendment Goes Through With a

Hand—Doar's Liquor Inspection

Bill Killed.

Columbia, Feb. 15.—Following Sen-

ator Bailey's address last night the

house this afternoon passed the bill

ratifying the Federal income tax

amendment. There were only three

votes against it.

The house killed Mr. Doar's bill pro-

viding for an inspection tax on liquor

shipped into the State.

Columbia, Feb. 16.—In view of final

adjournment Saturday the house to-

day continued all second reading

house bills, including special orders.

Among the bills killed were included

the following: Cosgrove's good roads

bond issue, and his State highway

bill, Patterson's dog muzzling bill,

Seibel's bill providing for four State

auditors, Gibson's anti-cigarette bill.

The whole time of the senate was

taken up with the asylum debate. No

vote was reached and not even third

reading bills were considered.

Columbia, Feb. 17.—The house

showed strong opposition today to

passing penitentiary convicts by vot-

ing down two to one, the resolution

authorizing the penitentiary board to

make a new lease. The present lease

expires in one year. Leasing was op-

posed on humanitarian grounds.

The senate continued the debate on

the resolution calling for the resig-

nation of Dr. Babcock and the asy-

lum regents. It will probably reach

a vote tonight. The opponents of the

resolution have clear majority. A

careful poll made today shows only

twelve votes for the resolution.

After a sharp debate the house

killed Senator Carlisle's bill prohib-

iting children under sixteen working

in cotton mills after night, and Car-

lisle's material and labor lien bill. It

passed Senator Clifton's bill pension-

ing certain widows, Sullivan's bill pro-

hibiting minors playing pool, and

Crosson's bill making spitting on floor

of passenger coaches a misdemeanor.

The bills passed will be ordered rat-

ified tomorrow.

## BIGAMIST ARRESTED.

### Accused of Bigamy, Aiken County

Man is Arrested in Georgia and

Brought to South Carolina.

Spartanburg, Feb. 15.—Dr. H. J.

Weeks of Wagener, Aiken county, who

was married here on August 9,

1908, to Miss Sarah E. Smith of this

city under the name of Dr. J. H.

Hamilton, was lodged in jail here yester-

day on the charge of bigamy. Soon

after the marriage here it developed

that Weeks had a wife living in Aiken

county and a reward for his arrest

was offered by Gov. Ansel. He and

his second wife had disappeared be-

fore this step was taken, going to New

Mexico, it is believed here.

Weeks traveled from place to place

in Mexico, New Mexico and finally

came to a little city in Georgia, quiet

and away from his old acquaintances,

he thought. But not so, soon a gen-

tleman, a former neighbor and ac-

quaintance at Wagener, now residing

at that point, walked into the drug

store, where he had engaged himself

as clerk and recognized him immedi-

ately. This recognition is said to

have led to his later arrest. A reward

of \$100 was offered by Gov. Ansel for

his arrest. He will probably be tried

at Spartanburg.

E. C. Knapp, who will have charge

of the monster "School of Methods,"

to be held in Cincinnati, February

21-25, by Sunday school workers, has

the distinction of being the only man

in the world who holds the position

of superintendent of two large Sun-

day schools—the Union Park Congre-

gational the First Evangelical, both

of Chicago.

## THE COURT'S DECISION.

### SYNOPSIS OF OPINION IN TILLMAN CASE.

#### The Law of the State as Applied to The Rights of Parents in Disposing of Minor Children.

After briefly setting forth the contentions of both sides and quoting the act under which young Tillman gave his children to Senator and Mrs. Tillman, the decision says "On behalf of the petitioner, it is contended that statute should be construed to confer on the father the right to dispose of the custody of his children only after his own death. This position is untenable. It is true that the statute of 12, Charles 11 C. 24, adopted in this State without change, in 1848 (2 Stat. 707), clearly limited such power to the disposal of the custody of his minor children to take effect only at the time of his death; that the first statute was entirely repealed by the revised statute containing the sections above quoted (except the amendment of 1887, providing for disposition by deed or will by the mother, the father being dead), was enacted, not as an amendment, but as a separate statute. When so enacted, it was placed under the general head 'Guardian and Ward' and under the subhead 'Minors,' the words limiting the application of the law to the custody of the children after the death of the father were omitted from the new statute and the omission clearly signifies the intention not to limit the power of disposition, which it conferred on the father, to custody after his death.

"The fact that the statute was placed in the revised codes of 1882, 1893 and 1902, under the head, 'testamentary guardians, might be regarded as significant of the intention, if the case were one of doubtful construction, but the place assigned to a statute in the civil code can not control the plain meaning expressed in the statute itself.

"It is therefore manifest that what-

ever power of disposition was conferred by the act on the father extended to the custody of children during his life.

"The next position taken on behalf of the petitioner is that the deed to the respondents could have no effect because there was a prior outstanding agreement between B. R. Tillman, Jr., and his wife, acquiesced in by the respondent, which provided that during the year 1909, the husband and wife should alternately have the custody of the children. The argument is that the first agreement was binding on the husband and the respondents, until it had been revoked by consent of the wife, or had expired by its own limitation.

"The argument fails, because the first agreement was made in view of the then existing separation of the husband and wife and there was afterward a reconciliation.

"Any agreement made in contemplation of broken family ties and providing for the continuation of the breach was annulled by the reconciliation and the renewal of united family life.

"This brings us to the inquiry, what is the extent of the power of disposition, conferred on the father. Did the general assembly intend to confer arbitrary power, regardless of the rights and welfare of the children, and of the family rights of the mother, or did it intend to confer upon him the power to transfer such rights as he himself had at the date of the deed, without infringing upon the rights of the children to be placed in the custody of their mother, and of the right of the mother to have their custody, in case the father had forfeited his right by his conduct?"

"We think the proposition capable of demonstrating that if the act is to be construed as conferring arbitrary power on the father, it is violative of constitutional rights. The constitution of this State provided: 'The privileges and immunities of citizens of this State and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be deprived of the equal protection of the laws.' (Article 1, section 5.). In the right of freedom from unlawful restraint is embraced the right of the enjoyment of all those privileges and immunities which belong to the citizen of a free country. These privileges and immunities are from their nature incapable of limitation by exact definition. For the purposes of this discussion, it is sufficient to say that they clearly embrace family rights; that is, the right of parents to the care and custody of their children, and the right of children to receive from their parents maintenance and care. But, be-

yond this there is a liberty of children above the control of their parents, which the courts of England, and this country have always enforced.

"When the parent, in asserting his claim to the custody of the child, disregards the correlative right of the child to care and maintenance at his hands, it is universally held that the right of the parent is at an end, and the child for itself, or another on its behalf, may assert the custody and control of the parent to be an illegal restraint upon its liberty. This liberty of the child, the right to be free from such illegal restraint of the parent, the constitution forbids to be taken away, except by due process of law. Within the protection of this provision of the constitution fall also certain rights of the parents against each other with respect to the custody of their children. The father, being charged with the support of his children ordinarily his right to their custody is superior to that of the mother, but when the father relinquishes his right to the custody, or forfeits by his conduct, there can be no doubt that the mother, under her family right, is entitled to the care and custody and care of her child.

"In other words, as soon as the father's right falls away, the mother's right immediately takes its place, and must be recognized by the court, unless it be relinquished or forfeited. The rights of the father and mother are both subject to the still higher right of the child to have its welfare safeguarded. It seems perfectly clear that the general assembly can not empower the father, at his own will, to deprive the mother and child of these legal rights so long established as elements of personal liberty.

"If these family rights of the mother and children were not within the protection of the constitution, under statutes like this, the father could exercise a tyranny revolting to all sense of justice and conceptions of personal liberty. He could at any moment, capriciously break up his family, take all his infant children from their mother without her consent and bestow them upon strangers; and the courts would be powerless to give any relief, though manifestly such a course of conduct would itself be plenary proof of relinquishment of the duties of the parental office.

"The argument comes to this: The guaranty of personal liberty expressed in the constitution means, above all else that no human being under the protection of the constitution, can be placed under subjection to the arbitrary power of disposition and control of any other human being. The legislature can not provide that the father shall make final disposition of the child's custody and thus settle an issue contested with him, in his own favor.

"There is another provision of the constitution equally fatal to the statute, regarded as an attempt to confer upon the father arbitrary power to grant the custody of his children to any other person, he may select, the constitution requires that the legislative, executive and judicial departments shall be forever separate and distinct from each other. The same provision was in the constitution in force when the statute under consideration was passed. The question of the custody of minors or their illegal restraint has always been recognized as a judicial question to be determined by the courts.

"From these considerations, it follows that if the act under consideration be construed as an attempt to give the father the absolute right to dispose of the custody of his children by deed or will, it must be held unconstitutional. While the father can not be empowered to convey away the rights of the children, or of the rights of the mother with respect to their custody, there is no reason why the general assembly may not provide that his deed should be binding on him. The result of this construction of the act would be to give effect, against the father himself to any deed made by him in accordance with the statute, so that after he had made such a deed he could not, as against the grantee, demand back the custody which he had voluntarily relinquished. Accordingly, the validity of the statute, to this extent is recognized.

"From these considerations, it follows that the rights of the children and their mother, the petitioner, are unaffected by the deed from B. R. Tillman, Jr., to the respondents; and hence the duty devolves upon the court to determine whether the custody of the children should be awarded to the petitioner, their mother or to the respondents, their grandparents.

"No claim is made by the father to the custody of his children. On the

contrary, in his deed to the respondents, he expressly states as one of the reasons for making it, that he does not wish to undertake the responsibilities of rearing them. The issue, then, is between the petitioner, in the maternal right, and the paternal grandfather and grandmother, claiming under deed from the father, and alleging the mother to be unfit to be entrusted with the rearing of the children. In the decision of this issue, the court should give great, if not conclusive, force to the witness of the father, expressed in the deed entrusting the custody of his children to another fitted to rear them, if the family relation was broken not by his own fault, but by the fault of incompetency of the mother. On the other hand, if the family relation was broken, by the taking of the children from the mother and bestowing them on the respondents against her protest, when there was not on her part such improper conduct or incompetency as to constitute a just reason for such extreme action, then the execution of the deed, and the taking away of the children could not be regarded other than acts in themselves so violative of the father's obligation to both mother and children as to call for the interference of the court in their behalf.

"This we think, presents the ultimate issue in the controversy. The version of the petitioner has been already set out. The respondents in their return make the general charges that the petitioner has always been disrespectful toward her husband and implacable in her dislike to his family, and they show that this dislike extended to unbecoming expressions of her antipathy in a letter to her husband. They express the opinion that the former intemperate habits of the husband were due to his unhappy marriage; in support of their claim that the deed was justified, and that they should retain the custody of the children, they introduced an affidavit of B. R. Tillman, Jr., intended to show the petitioner's unfitness to have charge of her children. In the affidavit, B. R. Tillman, Jr., admits that the faults attributed to him by his wife, then separation, his own contrition and their consequent reconciliation avowing, however, that he has entirely given up the use of intoxicants. He says that he was constrained to give the custody of his children to his father and mother, because of the unfitness of his wife to rear them in that she was selfish, had taught his children to hate his family, was arrogant toward him; showing a disposition to consider him and his family beneath her, and in that she had very little education and had expressed ideas upon the most sacred relations of life, which were absolutely contrary to the best interests of any home, and under which no child could be properly raised; he further avows that he sent the children away with his mother after his wife had angrily refused permission that they should go and remain until she had recovered her strength after the illness from which she was suffering. His account of the separation conflicts with that of the petitioner in that he avows that after he had sent the children away without her consent, she left their apartments and refused to communicate with him until the children should be returned. He admits that he made the deed attempting to permanently deprive her of them against her bitter opposition.

"We shall not undertake to pass on the differences between the statements of the husband and wife as to the trouble which led to the separation. We think there can be no doubt that the husband brought it on by sending the children away, and that there was nothing in the conduct of the wife justifying the inference that she had forfeited her right to be with and care for her children, or showing her to be incompetent or unfit for maternal duties. Her right to the privilege of having her children is greatly strengthened by the fact that they are girls of very tender years. Even in an issue between the father and mother, the court will usually grant such children to the custody of the mother unless there are strong reasons against doing so.

"The conclusion of this court is that the children are in the unlawful custody of the respondents, and that the petitioner is entitled to their custody.

"It is, therefore, ordered and adjudged that the respondents, B. R. Tillman, Sr., and his wife, Mrs. S. S. Tillman, deliver up the children to the petitioner, Mrs. Lucy Dugas Tillman, and that she have and retain the custody of them during their minority or until it be otherwise adjudged."

## GOOD BILLS KILLED.

### LEGISLATORS USE THE A' ON CALENDAR.

#### When Time to Adjourn Comes Law-Makers Make Short Work of Proposed Laws, Many of Which Have Great Merit.

Columbia, Feb. 16.—A lot of mighty good propositions went into the legislative waste basket yesterday in striking out of all bills in senate or house that had not passed the second reading in the house where they originated. A number of them will be pocketed by the members who hope to return next year by the suffrance of their constituents and make another trial of their merits on the calendar. The chances are, however, that there will not be over fifty of the members of the present house returned for another session. That has been the experience of the past, and there is little prospect of a change. Among those who have announced their intention to run for "something better" or who are spoken of are John G. Richards for governor, Speaker Whaley and Chas. A. Smith for lieutenant governor, M. L. Smith and Coke D. Mann for congress, Messrs. Scarborough, Dixon and Wingo for railroad commissioner. The others are talking among themselves very much of the coming campaign and whether they will try again for a seat in the house or senate. Several of the members of the house will try for the senate.

Among the bills laid over by the blanket order are the following of significance.

Mr. Cosgrove's highway bond proposition.

Mr. Patterson's muzzling of dogs when rabies appears in any community.

Mr. Seibels' for the appointment of State auditors.

Mr. Gibson's to prevent the sale of cigarettes.

Mr. Patterson's to reorganize the State board of health, all of which were special orders in the house.

Senator Smith's high license bill.

Senator Rainsford's to limit the number of dispensaries in any county.

Senator Griffin's to provide restrictions on the transfer of pupils in common school districts.

Senator Graydon's to prevent combination among the insurance companies to control rates, all of which were special orders in the senate.

Among the following are a number that are in both senate and house:

To establish a board of charities and corrections.

To declare it a misdemeanor to elect any person not a bona fide stockholder, a director in any bank.

To require insurance companies to invest a part of their reserve in South Carolina business in taxable South Carolina securities.

A joint resolution looking to an amendment in the matter of biennial sessions of the legislature.

Requiring railroad companies to take passengers on freight trains.

A liquor local option referendum bill including the license feature.

Requiring a board of corporations to enforce stockholders' liability.

To allow circuit judges in the State traveling expenses.

To provide for a tax commission.

To define intra-state shipments of freight.

To make the insurance commissioner's office take charge of and wind-up bankrupt corporations.

To establish agricultural schools, one bill calling for one in each district and one for four.

Another compulsory education law. Several child labor bills in each branch.

To declare the law as to the right of power.

To abolish tuition fees in Clemson and Winthrop.

To provide for a jury trial of facts in certain cases.

To provide free books in the public schools.

To regulate the assessment of municipal license taxes on insurance companies.

To require railroad companies to file a list of all passes issued by them in the State with the railroad commission.

To require county officers to make monthly statements to the grand juries.

To change the law in regard to the adoption of text books.

To provide for the registration of teachers with the superintendent of education.

To make sexual intercourse between whites and negroes a felony.

To require secret orders to take out a license.

To amend the constitution by increasing the population necessary in new counties.

To restrict the holding of special courts and doing away with the provision for special judges.

Several bills to regulate the award of free scholarships in the State so as to prevent rich men's children from taking the same, and some of the bills providing for punishment for the parent who takes advantage of the liberality of the State intended for poor people's children.

To increase the number of days allowed Clemson trustees to meet.

To prohibit corporal punishment in the schools except with consent of the parent.

To establish a State board of embalming.

To prohibit whiskey houses advertising in the State.

To require mortgages of crops to have the consent of the landowner.

The resolutions for the investigating of the railroad commission and the express company.

To regulate power companies in the State and ward off monopoly.

To exempt building and loan associations from taxes.

Two bills to fix the salaries of State officers.

For the uniformity of warehouse receipts.

A resolution to empower the Sergeant at Arms to purchase new furniture for the State House, and a resolution to authorize the Secretary of State to install a "vacuum cleaner" system for the State House.

To define the qualification of civil engineers and architects in the State.

To make it a capital offense to kidnap a child and threaten its death to secure ransom.

To require Clerks of Court to keep standard weights and measures.

To incorporate the trustees of the Columbia canal and give them power to develop the property and appurtenances thereto.

To increase the power of the insurance commissioner and his deputy in the matter of investigation of incendiary fires.

The creation of a conservation commission with especial reference to preserving the forests and punishing carelessness which causes fires and waste, of public wealth.

To regulate the use of automobiles in the State.

To make failure to pay for labor or materials prima facie evidence of fraud.

To require medical certificates before children can be employed in any industrial concern.

To regulate the practice of barbering, and for the protection of the patrons of barber shops against infection.

There have been so many bills passed requiring the erection of depots at stations that one would not believe that any more stations without depots could be found, but there are still a number of such bills on the calendar.

The calendar is cut down from 39 pages yesterday to 16 today and it is likely that a number of the senate bills will also be left at the post, for there will be no chance on earth of getting through even those. Uncontested matter is about all that has been gotten through this year, and that included a great deal that ought to have been contested. The general assembly will adjourn, as usual, about day light Sunday morning with half a dozen sleepy members upholding the speaker and president of the senate, and a few very tired clerks in the engrossing department and tagged out solicitors.

## BITTER AGAINST TILLMAN.

### Crepe-Tied Flowers Sent Him From Edgefield for His "Political Coffin."

Edgefield, Feb. 16.—A wreath of white hyacinths tied with a bow of black crepe was sent to United States Senator, B. R. Tillman by express this morning "from the mothers of Edgefield," to be used "as a decoration for his political coffin." It is reported that Mrs. Lucy Dugas Tillman with her two children will return to Edgefield the last of the present week, and plans are being made to have the community turn out en masse with a band from Augusta to greet her. A reception will be arranged in her honor at the residence of one of the most prominent citizens, it is stated.

## SENATOR TILLMAN ILL.

### Suffers Attack of Dizziness—His Condition Not Serious.

Washington, Feb. 16.—Senator Tillman, who suffered an attack of dizziness early this morning, and who was at once conveyed to his apartment at the Balfour, was reported resting easy tonight. It is believed that with care