The Herald and News.

VOL. XLII. NO. 52 NEWBERRY, S. C., FRIDAY MARCH 31, 1905. TWICE A WEEK, $1.50 A YEAR

NEW WAREHOUSE FELL OF ITS OWN WEIGHT

NO ONE WAS SERIOUSLY INJURED.

The News of Prosperity—Mr. Andrew Ham Painfully Injured—Other Matters.

Prosperity, March 30.—We are glad to see Mr. A. P. Dominick on our streets again after several weeks of sickness.

Mrs. C. M. Boyd has gone on a visit to her parents at Due West.

Messrs. R. C. Counts, J. M. Werts and Miss Addie Werts went over to Saluda Sunday to attend the funeral of Miss Essie, daughter of Mr. J. Samuel Werts. Mr. Werts has buried two children since the holidays.

The Loyal Temperance Legion, under the care of Mrs. Roebec Singley, will give an entertainment on April 28. This will be an opportunity to encourage a good cause.

Mrs. Amanda Bowers, wife of Mr. J. Pat Bowers, quietly entered into rest on Tuesday, March 27, aged 65 years, 5 months and 7 days. She was married to Mr. Bowers in August, 1873. She was a consistent member of Wightman Chapel. The funeral services were conducted by her pastor, the Rev. J. K. McCain. She was laid to rest in Prosperity cemetery to await the resurrection of the just. She leaves a husband and hosts of friends to mourn her departure.

Dr. W. C. Brown, wife and daughter visted Mr. J. Y. Thompsosn this week.

The Jolly Dozen, together with their invited gentlemen friends had a jolly good time at an "at home," given by Miss Lilly Mae Russell on Tuesday night. It was an occasion of much enjoyment.

Dr. O. B. Mayer was in town for a few hours last week on his return from a visit to Miss Essie Moore, who has been quite sick, but is now convalescent.

Quite a number of the college boys spent Sunday at home, returning to their duties on Monday.

Mr. Meisenheimer, of Charlotte, N. C., and student of Newberry college, spent Saturday and Sunday in town, the guest of his schoolmate, Mr. Geo. Harmon.

Mr. Berley Kibler, of West Virginia, has been on a visit to Mr. B. B. Schumpert.

Our neighbor across the alley has a good joke on one of the clerks in his store, and he takes pleasure in telling what the wild waves of Saluda are saying to G. A. P. when he goes calling. Ask Ernest W. He'll tell you gladly.

Rev. C. M. Boyd will join Mrs. Boyd at Due West early next week.

Mr. L. A. Stockman returned Wednesday from a very pleasant visit to Col. J. B. Stockman's of Zion.

Mr. H. M. Boozer went to Chester upon receipt of the news of the killing of his nephew, Langdon Boozer, by a party on Monday. The young man was the son of a former citizen of No. 9, Mr. L. D. Boozer. We extend our sympathy to the bereaved parents in their hour of bereavement. Mr. L. D. Boozer is now a resident of Goldville, Laurens county.

I am requested by Mr. J. P. Bowers to extend his most heartfelt thanks to the many friends and neighbors for their kindess to himself and family during the recent sickness and death of Mrs. Bowers.

Dr. Parker, the popular salesman of the Murray Drug company, was in town the past week. It is reported that the doctor calls on more than the durggists, but of this, this deponent knoweth not.

Mr. J. Raymond Fellers, of Newberry, enjoyed the "at home" of the Jolly Dozen on Tuesday night.

A new warehouse, built last November for Messrs. Wheeler and Bowers, on the track of the C., N. & L. rail road collapsed Wednesday afternoon about 4 o'clock. Fortunately no one was seriously hurt. Mr. L. S. Bowers was standing in the door and was thrown backward on the floor. The roof did not fall in or he and probably Rev. Z. W. Bedenbaugh would have been crushed. Charles Schumpert had his foot or ankle hurt. That is the only damage to life or limb. The cause was evidently from the poor class of brick used in the building of the pillars. There were about 75 tons of fertilizers in the house at the time. The roof is still intact. The pillars gave way and the house parted, and the building with contents fell to the ground. Mr. Drayton Taylor had his buggy under it and it is a total wreck. The loss outside the building will be small.

Mesdames Harry and Cole. L. Blease and Miss Lillie and Mamie Blease visited Mrs. F. E. Schumpert Wednesday, returning to Newberry on the early evening train.

Mrs. K. Baker has returned to Greenwood after spending a week with her father and sisters in town.

Mr. Geo. Swittenberg, of Jalapa, a student of Newberry college, was the guest of Mr. Bushnell Bowers over Sunday.

We lear from the daily press that our young friend, Cecil Wyche, of the Citadel is first alternate at the naval academy at Annapolis. We congratulate him on his success.

We noticed in one of the papers last week that Orangeburg had laid the corner stone of a handsome graded school building. We wonder when we can publish the same news of Prosperity.

Uncle Mike Kempson was in town last Saturday.

We regret to learn of the serious accident that happened to Mr. Andrew Ham, of lower No. 9, on last Friday. He was driving a loaded wagon down hill and the mules started to trot with it, and in trying to stop them he was thrown to the ground. He was struck by the hub of the forewheel and doubled up and turned over and was very painfully hurt. Dr. Wheeler thinks that he will be able to be up in a few days. Fortunately no bones were broken.

Mrs. W. A. Hartman, of Atlanta, Ga., is visiting Mr. J. W. Hartman and family, of Mt. Pilgrim.

Miss Ethel Russell, of Newberry, is visiting Mrs. J. S. Wheeler this week.

We regret to learn that one of No. 9's most substantial citizens is going to leave us. Mr. Jno. A. Fellers informs me that he has bought the Alf. Reeder plantation of about 350 acres near Gary's and will move up there this fall. While we regret to lose Mr. Fellers it will be No. 4's gain. We wish him much success in his new home and hope to see him down our way occasionally, at least.

The alarm of fire was sounded Sunday night, and it was found that an out house on Lawson Moore's place, just beyond the incorporate limits, was burning. It was too far gone when discovered to save it. It was used as a place of storage, and there was quite a lot of tools, old clothing, furniture, etc., burned. The loss is thought to be about $100, exclusive of building. The origin of the fire is unknown, but supposed to have been caused by rats and matches.

There has been more cotton on the market here the past few days than for some time.

Miss Lula May Buzhardt, of Newberry, and Miss Alma Fellers, of St. Pauls, visited Mrs. J. P. Wicker the past week.

Miss Lizzie DeWalt has been visiting relatives in the St. Phillps community the past week.

Messrs. A. H. Hawkins and A. G. Wise went to the City on the Canal yesterday on business.

REPORT OF REFEREE IN PROSPERITY CASE

FACTS AS TO THE TOWN HALL DEBT.

Report Has Been Submitted to Supreme Court by Referee H. C. Holloway.

Referee Henry C. Holloway has submitted to the state supreme court his findings of fact in the case from Prosperity, wherein it is sought by plaintiffs to permanently enjoin the town from paying a certain note given as security for debt incurred in the erection of the town hall, market and guard house. The case is now in the supreme court, a temporary injunction restraining the town from paying the note having been issued. Following is the full text of Referee Holloway's report:

STATE OF SOUTH CAROLINA,
IN THE SUPREME COURT.

R. L. Luther, J. B. Simpson, W. A. Moseley, J. P. Bowers, T. A. Dominick and J. D. Quattlebaum, Plaintiffs, against J. S. Wheeler, as Intendant, and S. S. Birge, A. H. Hawkins, R. C. Counts, and D. W. Boland, as Wardens, constituting the Town Council of the Town of Prosperity; and the Bank of Prosperity, Defendants—Report of Referee.

To the Honorable Chief Justice and Associate Justices of said Court: All issues of fact in the above entitled cause having been referred to me by an order of the honorable chief justice on the 16th day of August, 1904, to take the testimony and report the same, together with my conclusions thereon, I beg to report the testimony so taken before me and to submit my conclusions.

I find that the plaintiffs are resident tax payers of the town of Prosperity, in said state; that the defendants, Wheeler is intendant, Hawkins, Counts, Birge and Boland are wardens, as such, constitute the town council of said town of Prosperity.

I find from the cash book of the town council that its receipts and expenditures for the fiscal year commencing April 22d, 1902, and ending April 21, 1903, as follows:

Receipts.

Cash on hand beginning fiscal year	$ 217 04
Income from taxes (2 1-2 mills levy)	313 06
Income from rents, fines, etc.	1302 09
July 11, borrowed P. B. & Trust Co.	960 00
Aug 23, borrowed Prosperity Stock Co.	45 00
Sept. 8, borrowed Prosperity Stock Co.	10 00
Sept 8, borrowed Bank of Prosperity	587 47
Jan'y 10, 1903, borrowed BanBk of P.	1000 00
	$4434 66

Expenditures.

Sept. 8, paid Prosperity Stock Co. (notes)	$ 55 00
Dec. 8, paid Bank of P. (discount on note)	48 40
Jan'y 10, 1903, paid P. B. & Trust Co. (note)	1000 00
Jan'y 14, 1903, paid Bank of P. (discount note)	81 77
Cash paid on town hall building	2141 01
Paid on ordinary current expenses of town	1144 35
	$4470 53

I find from the cash book of the town council that its receipts and expenditures for the fiscal year commencing April 22, 1903, and ending April 27, 1904, as follows:

Receipts.

Cash on hand beginning fiscal year	$ 211 74
Income from taxes (2 1-2 mills levy)	311 90
Income from rents, fines, etc.	1283 31
	$1806 95

Expenditures.

June 23, paid B. of P. note (Pr. Stock Co.)	$ 162 00
Jan'y 7, 1904, paid B. of P. note	600.00
Jan'y 27, 1904, paid interest note overdue	4 40
March 9, 1904, paid B. of P. note	80 00
Paid ordinary current expenses of town	897 56
	$1743 96

I find that on the 19th day of March, 1902, upon due notice first given by the town council, some 65 to 75 out of some 90 to 95 of the registered voters of the citizens of the town of Prosperity, as it was their custom to do in early spring, assembled, and at which meeting at least one of plaintiffs was present, in the high school building for the purpose of nominating an intendant and wardens to serve for the ensuing fiscal year. The testimony is, that after the nomination a resolution was introduced to the effect "that it be the sense of this meeting" that the council to be elected be requested to procure a suitable lot and to build thereon a town hall, market house and guardhouse. This resolution was carried without a dissenting vote. The nominees were elected, and on April 22, 1902, at a special meeting of the newly installed council, a committee was appointed "to obtain site to build town hall, etc." On the 18th day of May, 1902, the committee reported that it had procured a lot "for building guard house, etc." the purchase price of which would be $150.00. Council accepted the offer, received a deed for the lot 30th June, 1902, executing its note of that date for $150.00, and interest, in payment thereof, payable in one year. I am asked to find that it does not appear from the minutes of the citizens' meeting on the 19th March to nominate officers that the question of the erection of a town hall, or other building, or any other subject than the nomination of intendant and wardens and the election of health officer was considered. But to the contrary, the first record of any reference is found in minute book of April 22d, at a special meeting of council. It does not appear from the minute book, or other testimony, that there has ever been a meeting of citizens to consider the building, its cost, etc., of town hall, market house and guardhouse. I so find, except as herein above stated.

At a special meeting, held July 5th, 1902, council passed an ordinance to borrow $1000.00 from the Palmetto Bank & Trust Co., of Columbia, S. C., "for the purpose of building city hall." Resolution dated the 9th day of July, 1902, regularly and properly signed by the intendant and wardens of the town, attested, under seal, by the clerk and treasurer of council, and certified to by said clerk on said last date, authorizes the borrowing of $1000.00 from the Palmetto Bank & Trust Co., with which to "carry on the affairs of the town," payable 10th January, 1903; and the intendant, clerk and treasurer, are authorized to sign the obligation of the town for said sum, and to pledge as security therefor the taxes of the town arising from the levy for that year, or the profits derived by the town from the dispensary or both if necessary. That on the 11th of July, the town council, by its constituted authorities, executed its note to the Palmetto Bank & Trust Co. for $1000.00 and received thereon $960.00, the discount being $40.00. I am asked to find "that an ordinance to borrow this money was offered in evidence and marked 'Exhibit C,' dated July 9th, 1902, but no entry of

(Continued on Fourth Page.)

THE COUNTY BOARD IS WITHOUT JURISDICTION

SO SAYS ATTORNEY GENERAL GUNTER.

Reverses Verbal Opinion Expressed By Assistant Attorney General In Graded School Matter.

That the county board of education is without jurisdiction in the matter of ordering the election of trustees for the Newberry graded schools, provided for in the amending school Act passed by the general assembly at its last session, is the opinion of Attorney General Gunter, forwarded to County Superintendent of Education J. S. Wheeler, the attorney general thus reversing the verbal opinion expressed by his assistant, Mr. W. H. Townsend.

The legal tangle which has come about since the amending school Act was passed by the last general assembly has been freely discussed by all those interested and has been the subject of general interest in Newberry. The Act abolishes the present board of trustees of the city schools, consisting of seven life members and four elective members, providing that on the first of June the present board shall be succeeded by a board of five members, one from each ward, to be elected by the respective wards in April. Through an oversight the Act did not provide the manner of election of the new board of trustees, and the question has been whose duty it is to order the election. The present board, through its attorney, Mr. F. L. Bynum, secured an opinion from the assistant attorney general stating that the board of trustees was not charged with the duty of ordering the election and that, under the law, the present board remained in office until its successors were elected and qualified.

After this opinion was rendered Senator Cole. L. Blease requested the county superintendent of education to order the election, stating that Assistant Attorney General Townsend had told him that he had advised Mr. Bynum that it was the duty of the county board of education to order the election "and that Mr. Bynum asked him (the assistant attorney general) not to put that in his opinion as he only wanted answers to the questions which he had asked, and the assistant attorney general then struck out that part of his opinion." Thereupon Chairman Johnstone, of the board of trustees, was interviewed, and stated that Mr. Bynum had acted under instructions. "I approved his action in taking no statement as to any one else's duties except the trustees," said Mr. Johnstone, "because I had instructed him to take none other."

The opinions above referred to, the request of Senator Blease and the statement of Chairman Johnstone have all appeared in full in The Herald and News, and they are referred to here simply to put the whole record straight.

Immediately after Senator Blease's request was made to County Superintendent of Education Wheeler, Assistant Attorney General Townsend was called over the long distance 'phone, at the request of County Superintendent Wheeler, and the assistant attorney general stated positively that it had been his opinion that it was the duty of the county board to order the election, that this part of his opinion had been left out of the written opinion at the request of Mr. Bynum, and that he would forward as soon as possible a written opinion to the effect that it was the duty of the county board of education to order the election.

County Superintendent Wheeler went to Columbia and called at the attorney general's office and was assured that an opinion would be for-