

In the issue of *The State* of March 24, 1902 N. G. Gonzales, its editor, published that Lieutenant Governor James H. Tillman had perpetuated a fraud on the State Senate of which Tillman was ex-officio president. Tillman had held that a motion to postpone indefinitely a bill was not debatable. The Senate unanimously over-ruled him. Tillman later stated that he had wired Senator Frye, president *pro tem.* of the United States Senate and Speaker Henderson, of the National House of Representatives, and both had sustained his ruling. Gonzales wired both and they replied that such a motion was debatable and had so wired Tillman. Gonzales called on the Senate to impeach Tillman.

Tillman was a candidate for Governor the following summer. Gonzales opposed his election.

On January 15th, 1903 Tillman shot down the unarmed Gonzales on the Main Street of Columbia, and he died on January 19th. The trial of the assassin was held in Lexington County in September and lasted three weeks.

The following is the principal part of the argument of William Elliott of Columbia:

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Your Honor and Gentlemen of the Jury:

I propose first to tell you this, that I am a kinsman of N. G. Gonzales. I propose to tell it to you because I wish to be fair with you. But after the counsel for the defense have flung this fact in your faces, I propose to go further and say this, that I am proud I am a kinsman of N. G. Gonzales. His people and my people have been following their modest avocations tilling the soil of South Carolina for nearly 200 years. In every generation there have been men who have died to serve South Carolina. In the late war my father and his father fought on the side of the Confederacy together, and in that war more than one of our blood served South Carolina with their lives. In the present generation not one of us have had such a privilege until the 15th day of January last, when N. G. Gonzales offered up his life in the service of South Carolina as truly as ever man did on the field of battle. He offered up his life for what he believed was right, true, honest and fair, and I am proud that I am a kinsman of a man who in the hour of tragedy could look his slayer in the face, ask no mercy, but say as he said, "Here I am, finish me." He went down into the valley into the shadow of death a gentleman unafraid, and I am proud I am a kinsman of such a man.

I know, gentlemen, that rumor has been rife in this case and I know it has been said that I was to stand before you today and heap mountains of abuse on the head of James H. Tillman; I have no such intention, gentlemen. Were I to say one word of abuse against the defendant which I did not conceive to be my absolute duty, while he must sit there and not answer; were I to utter one word I would despise myself for the rest of my life. But, gentlemen, were I to utter one word less than my duty,

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Gift through USCS of William Elliott, Columbia, S.C.

Aug., 1942

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counsel on the other side, my associates, and all my friends would have just cause to despise me for the rest of my life.

I want to say that I wave aside as fiction absolutely, the plea of self-defense in this case. The idea that a man with the intelligence of James H. Tillman should stand before you and say that he found it necessary to kill a brave man because he wiggled his thumb at him is not worthy of serious discussion. If the time has come in South Carolina when a man has been shot in his tracks for wiggling his thumbs—the defendant says himself that's all—then indeed is our manhood debased. There is but one motive which actuated James H. Tillman in this case, and that was the belief that by killing N. G. Gonzales, the author of these editorials, he would vindicate himself.

Now what does James H. Tillman ask at your hands? He asks you to exempt him from criticism as an officer, he asks you to exempt him from the consequences of his deed, he asks you to believe him against the crowd of witnesses who have been brought here, and he asks and his counsel asks that N. G. Gonzales shall be required to assume what every newspaper in South Carolina has said, and be responsible for the utterance of words he never saw and never knew of. They have placed upon N. G. Gonzales' head the abuse of every newspaper in South Carolina. I will show you that later on, and James H. Tillman asks you to exempt him from the consequences of a quarrel which he begun himself. The first bitter word used was in that controversy in Winnsboro when he called N. G. Gonzales a man of "treacherous blood" and a "wily Spaniard." Was anything which N. G. Gonzales said against him any severer than that? Not satisfied with stigmatizing a man, he wants to stigmatize

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his whole race of people. That's how this quarrel begun, and he now asks you to exempt him from the consequences of that act.

But what made him kill N. G. Gonzales? Mr. Gonzales criticised him as a public officer, criticised him as a candidate. He said I have certain proof to present against you as a public officer and here it is. As a candidate I have proof which tends to show you are unfit for public office, and here it is. You heard me read those editorials; those many pages of calm quiet discussion, the production of evidence, the call for evidence. How much abusive evidence did you hear? Very little. All was calm discussion. That was evidence which N. G. Gonzales had a right to bring out; that right is the most carefully guarded right known to an American citizen. I say it and am prepared to prove it that it is more carefully guarded than the right to trial by jury. In nearly every country except America if you criticise an official, if you say a thing is not done right you have to go to jail for it. In England they sent a man to jail for saying that the Prince of Wales, the son of the king, was too fat. They sent that man to jail for saying that, but we don't do that in America. The constitution of the United States, all the constitutions of South Carolina, from the first constitution of 1778, about 125 years ago, have guaranteed the right to every man to say what he wanted about public officers and candidates for office provided he stood ready to prove his charges. Now, nobody denies that, but I want to tell you gentlemen this, that those who made our laws, and there are two of them in the court house today, acknowledge that every other right under the law amounts to nothing, absolutely nothing, unless you can say what you please about those who make our laws, about those who are our officers

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and candidates for office. But my friends cry, "What of the abuse?" Gentlemen, the abuse is regulated in a number of ways. James H. Tillman had at his command a complete remedy for the abuse, as he calls it, of the press. The first method of regulating it is public opinion. You, gentlemen, all honest men, all citizens, all voters know that if a man is unjustly attacked, false accusations brought against him, that there is an uprising of public sympathy to support that man and damn his accusers; that no man dare raise his head in the public print in false accusation. You know that if a man is slandered, immediately the sympathy of the whole community goes out to him; that is universal history. George Washington, who is described as the sublimest figure in history, was villified like a pickpocket. The defendant, James H. Tillman, has never had heaped upon him the abuse that was heaped upon Washington, yet he who is styled the sublimest figure in all history, George Washington, was never known to shoot a man. Thomas Jefferson, one of the greatest men, I believe, our nation has ever produced, a man of whom it was said that if the whole of humanity were arrayed on one side and Thomas Jefferson on the other that it would be found that Thomas Jefferson was right; they called him every name that man could conceive, under the shadow of his own house in Charlottesville; they told him he had stolen money. Did he get on his horse and go down with the avenging arm of force and blow the heart out of the editor who wrote that? He did not. He came out and gave a statement of the money he had received for the purpose named and said, "Here are the vouchers to prove it," and that editor picked up his chattels and left the community in short order. The Abolition press heaped on John C. Calhoun such abuse

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as no man ever had borne. But did you ever hear of his shooting anybody for it? He went on the floor of the senate and vindicated himself in his own words, and one of the greatest men New England ever produced, Daniel Webster, said of Calhoun when he died, "I stand today under an abiding sense of his exalted patriotism." He had vindicated his own name. The name of Senator Benjamin R. Tillman has been brought in here today. He has been attacked by newspapers, criticised at times, but he has not found it necessary to shoot down any editor. He has been abused and criticised and yet today I believe he is stronger in the hearts of his people than he was before those attacks were made upon him. If you should ask him today if he wished to wipe out absolutely this right of the press to say what they pleased provided they stood answerable before the law for the consequences, I am sure he would say no, that while they sometimes criticised him unjustly he would stand powerless in the United States to curb corruption, cow the trusts and vindicate himself were it not for the fact that the newspapers have the right to publish what they think and back it up.

Public opinion is a pretty poor thing some men might say. The law gives to a man a civil remedy. This defendant could have sued N. G. Gonzales for libel. He could have gone in a court house and sued him on the civil side of the court for libel. He could allege: "You said untrue things of me and you must answer the consequences," and a jury would sit as a court of honor. Under the constitution in such a case they are the sole judges of the law and fact, and no such right is given anywhere else in the law, to any citizens, for any wrong. It is the severest test almost that could be invoked. The jury shall be unrestrained in passing upon the

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charges. But my friends will say, "perhaps N. G. Gonzales had no money." Perhaps after 12 years of slaving on a newspaper as no man on this jury has slaved; perhaps after 12 years of going from his work in the morning hours when you gentlemen are going to your work, perhaps he did not have any money; but there were 12 years of grinding work such as none of you gentlemen know, and to take the little he had from him would have been a punishment indeed. Besides he was a proud man. Would not the fact that a jury of his countrymen had said "You have slandered and falsely accused a fellow citizen," would not that have been punishment enough for any man? But my friends will say that would have been a long and expensive trial. I venture to say that the trial would not have been half as long, or the expense half as great as in this case and James H. Tillman would have had the chance to vindicate himself, and would not have had the blood of his fellowman on his hands. But, do you expect, they say, an honorable citizen innocent of the charge of which he stands accused to come before a jury and vindicate himself? That's the law, gentlemen, and we all obey the law. The law says that, and it is obeyed by the highest and most honorable men that our nation has ever produced. Thomas Jefferson, of whom I have just spoken, he who wrote the Declaration of Independence, was slandered. Did he stand aside and say, "I am not required to go before a jury, I prefer not to do it?" No, sir. He left his home at Charlottesville and went to the State of New York, entered the court house and said, "This man has libeled me, make him pay for it," and they made him pay for it. The king of England descended from his throne and entered his own courts to vindicate his name, the courts which he set up, not like our courts set

up by the people, but the judges he appointed and the courts he created—he entered and vindicated his name; and the best men that South Carolina has produced, when slandered, have not thought it beneath their dignity to go in the courts and vindicate themselves when charges made against them were false. But such a course was beneath the dignity of James H. Tillman. He preferred his vindication by taking a human life.

Now, lastly, I come to the severest trial known to the law, prosecution for libel. A man who edits a newspaper has only the right of saying that which a man who speaks outside of the public print has. It is the same; only one is not in public print and one is. But a man who publishes an untrue statement about another is guilty of a criminal offense. Follow me and listen to the remedy James H. Tillman had in his hands to vindicate himself. He could have indicted N. G. Gonzales for libel. It is an old common law offense. The law says that libel varies so much in degree, is sometimes so high and sometimes so trivial that it prescribes absolutely no punishment for it. The jury trying the case and the judge making the sentence can fix the punishment absolutely, because the law puts no limitation that I can find, or any of my legal friends can find, on the punishment the judge can fix upon a man guilty of a criminal libel. What can the publisher do? He is permitted under the law to give the truth of his charge in extenuation. If he does not prove his charge he is guilty of libel, and he is punished for his libel. But suppose he proves it—if the jury believe he has made that charge with a bad heart, if they believe malice was in his heart when he made it, and he made it from a base motive, they can find him guilty even if every

syllable of the charge is true. That is the remedy that James H. Tillman had in his hand if he wanted vindication. What higher vindication can you conceive of than to go in a court house, prove yourself innocent of every charge which has been brought against you and have your accuser put in the public jail for a time within the discretion of the judge? What vindication can be more supreme than, having proved the falsity of the charge and the baseness of the motive, to walk out a free, honored, respected citizen, walk before the windows of the public jail and see your accuser incarcerated behind those bars? Is the vindication of having slain your accuser equal to that? Can you conceive of a vindication more supreme, more delightful than that? I am free to confess that I cannot.

Having shown you the rights, those powerful, unequalled rights, the legal machinery, unequalled anywhere in the law, that James H. Tillman had at his hands to vindicate himself, I want to discuss now a few of those editorials. As I said awhile ago, those editorials gave evidence. They had the whole State of South Carolina for a jury and presented the evidence before the jury and asked them to convict or acquit. Gonzales said again and again, "If the people want to vote for James H. Tillman, I have nothing to say. All I want to do is to produce the evidence," and when James H. Tillman did not reply what was his criticism? "You have given me no evidence. Produce evidence and let us try this thing fully and squarely. I have presented some affidavits here and statements of reputable newspapers. As far as I can see with the present facts before us you are unfit for office." What was Tillman's reply? He answered with nothing. Before he reached Columbia Gonzales asked again, "I have made open charges against you

tending to show you are unfit for public office, which convinced me in my mind you are unfit for office. Come forward with proof in your speech in Columbia." And to this Tillman said not one word. The conviction of James H. Tillman was by his own silence, because he had nothing to say in reply to these charges. My friends have quoted here with a facility of memory which is a credit to them, rolling the words out of their mouths with delight, all the abusive words scattered through those editorials, but gentlemen, most of those abusive words are from other newspapers. I will give you a few examples. They speak of the "Also Brayed Class" and the unnecessary time it takes to "Shave an Ass." Now, Gonzales never said that. The Washington Post, published in the city of Washington, D. C., with a responsible editor, I presume, said that. Counsel have asked here about the comparison between Jenkins and Tillman, "The Soldier and the Swashbuckler, the Gentleman and the Blackguard," or something like that. That also is charged to Mr. Gonzales, but Mr. Gonzales never said that. The Charleston Evening Post, a newspaper published in Charleston, S. C., with a responsible editor, who walks the streets every day, he is the man who said that. Yet it is charged up to Mr. Gonzales.

With them everything goes into one basket. These gentlemen have seen fit to refer to a charge of Mr. Tillman absenting himself from a campaign meeting because of the sickness of his sister when his sister was not sick. Mr. Gonzales never uttered that. The Florence Times, published in Florence, S. C., a paper with a responsible editor, who I presume is responsible for what he says, said that, and Mr. Gonzales quoted it. It is in quotation marks, printed from the Florence Times and its

editor I believe is still living. Then the editorial in which James H. Tillman is denounced because, as the editor says, he "lives and breathes in a very atmosphere of falsehood." Severe enough, severer than anything the dead editor ever said of him, severe enough if he meant to vindicate himself by killing a man to go and kill that editor. Mr. Gonzales didn't say that; an Anderson paper, published in Anderson, S. C., said that. A responsible editor, I presume.

He has been compared to F. J. Moses. Surely a severe charge, but Mr. Gonzales didn't say that. Another paper published the charge; the editor I presume is still living. It is the severest thing said in the whole course of these editorials; severer than anything N. G. Gonzales has ever said, and he puts it down to Mr. Gonzales; he prefers to charge it up to Mr. Gonzales. Mr. Gonzales never referred to the home life of the defendant. He spurned the charge and threw it away from him with scorn which strikes me now with the profoundest admiration. How much has been said here about the charge against the defendant about falsifying the records? I am not endeavoring to prove that Mr. Gonzales' charges were true. That is not the issue in this case. We don't endeavor to make it the issue. It does not help or hurt this case one iota for us to prove these charges true. I am endeavoring to prove to you that with the light N. G. Gonzales had, and James H. Tillman being a public officer and a candidate for office, he had a right, under the law, to investigate fully his sayings and doings. Let me read you the law taken from the case of Mayrant against Richardson, McCord, page 350, one of the oldest cases we have. The court says:

"And I am not aware of any principle of law or constitution, by which a person by proclaiming

himself a candidate for congress becomes so far elevated above the common level of mankind, as to entitled him to any exclusive privileges. On the contrary, when one becomes a candidate for public honors, he makes profert of himself for public investigation. All his pretensions become proper subjects of enquiry and discussion. He makes himself a species of public property, into the qualities of which every one has a right to enquire, and of the fitness of which, every one has a right to judge and give his opinions. The ordeal of public scrutiny, is many times, a disagreeable and painful operation. But it is the result of that freedom of speech, which is the necessary attribute of every free government, and is expressly guaranteed to the people of this country by the constitution. * * * It is not contended, on the part of the defendant, that the constitutional privilege of the freedom of speech is a Telemonian shield from under which every person in any case of election, may hurl his javelins of false and malicious slander, secure from the animadversions of the law. No such exemption is claimed by the defendant, nor would it be allowed by the court."

Now the defendant had the right, if N. G. Gonzales could not substantiate what he said or convince a jury of the absolute purity of his motives, to have him put in jail for it. Why did not the defendant put him to his proof instead of shooting him? I leave the question for you, gentlemen, to answer. I am not going into the secret motives of the defendant, but the evidence is before you. The editorials and the statement of the law which I have just made is before you and it is for you to decide why he did not put him to the proof of these editorials. Take the other side of the case. The defendant admits, and his counsel admits that James

H. Tillman assailed Gonzales on every stump in South Carolina. Follow the line of this argument. Take up his vindication, his vengeance argument and where will the defendant be? He will confess that because of these attacks on the stump which he had a right to make under the constitution, the same right that Mr. Gonzales had, that Mr. Gonzales would have been justified in shooting him down on sight for vindication. Does that hold good? We repudiate it. Counsel admits that rumors were circulated through the State of South Carolina, admits they were broadcast everywhere. Should not the defendant have thanked N. G. Gonzales for coming out in the manly way, open, above board, in black and white, where he who runs may read, where his words could be put up and never taken down, where a man could not come in and say I did not say exactly that, I qualified it this way. He wrote his accusations, in black and white, put them forcibly and put them before the public. They were published before all men. If they were untrue should not James H. Tillman have thanked the dead editor for having put these charges in a form in which he could answer them, for having put them before the public in such shape that he could vindicate himself?

Now, gentlemen, I want to ask you this: What would be the effect of a verdict of "not guilty" in this case? Would not you twelve jurors, sitting here as the arbiters between the State of South Carolina, whose peace has been outraged, and the defendant, James H. Tillman, say by your verdict: We, a jury of true and lawful Lexington citizens, preferring to have dishonest and corrupt men in public office rather than have their character and reputation and fitness discussed, render a verdict of not guilty? Would not your verdict be saying:

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In the future, when any editor undertakes to exert his constitutional privilege of investigating fairly and openly a candidate for office he may know that if the candidate is offended at his scrutiny; if he thinks the editor comes a little close, the candidate may shoot the editor on sight, although the editor exerts the highest constitutional privilege, and we, a Lexington jury, will reverse the whole course of American history and acquit him. We will give the lie to all those wise men who have founded these constitutions and made these laws, and consider the editor's life forfeited to the candidate, who may with impunity do his work of vengeance? That will be the effect of your verdict.

And finally, gentlemen, since James H. Tillman slew N. G. Gonzales for vindication, has he gotten it? No. Will his deed restrain other critical editors? No; for the time has not yet come when Anglo-Saxons can be deterred by the fear of death from doing their duty, and though he slay a hundred critical editors there would yet be another to step in where the last man fell. Has he vindicated himself? No, he has not; he has but slain the prosecuting witness, and added a crime to his record which far exceeds anything charged against him by the dead editor.

James H. Tillman's motive was revenge, and he is a murderer.

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