TARBOROUGH:

SATURDAY, MARCH 23, 1844.

FOR GOVERNOR,

Col. Michael Hoke, of Lincoln.

Annexation of Texas.

From the National Intelligencer we learn, that negotiations have been some time progressing for the annexation of Texas to the United States, and that Pinkney Henderson, formerly of No. Ca., is daily expected as Texian Minister to complete the negotiation—and we were greatly gratified to learn from the Intelligencer, that there is a prospect of its speedy success.

We would hail this as a most propitious event, likely to give eclat to the administration and confer a solid benefit to the country.

Texas was once included in the boundaries of the United States, and as rightfully belonged to us as the present States of Louisiana and Arkansas—and was actually ceded away by John Quincy Adams's treaty, which ought never to have been tolerated, and if the present state of things could have been foreseen, never would. So the present annexation will only restore things to their proper and original position, and put us in possession of rights we were improperly deprived of.

Texas is a rich cotton growing country—possessing advantages of climate and soil, which has already drawn from us a large population—which would continue to increase under a government, such as ours inspiring the confidence of its citizens, and would soon be settled up by a thick and enterprising population, commanding the respect of the Union and of foreign nations. Her geographical situation, her productions, character of population and national interests, are so intimately blended and connected with our own, as to render the union of the two countries a matter of vital interest to both parties.

Texas as a separate government, would only be an insignificant republic, subject to intestine feuds, and might, by the interference of foreign powers, be troublesome neighbors. Those interests which nature proclaim as similar and identical, which would strive and strengthen from our union, might by a continued separation be antagonistic—jealousies and rivalries would spring up, and restrictive and hostile measures ensue—and England, ever ready to meddle with other nations, and profit by their weakness, would foment these difficulties for her own advantage. Texas was settled by Americans, rescued from the oppression and misrule of Mexican tyranny by Anglo-Saxon blood, and now seems only a di-membered fragment of our country, and our own interest and glory demand its re-union.

But it is a matter of peculiar interest and great moment to the South. The attacks so fiercely made by Northern Abolitionists—their increasing strength and constantly growing territory, by the creation of new Northern States, require some portion of increase likewise in the South, to counterbalance this power, and preserve the Union. Our Government is founded on a system of checks and compromises, which alone can sustain it; and the undue increase of sectional interest in one quarter, produces oppression in the others. That is now our unfortunate situation—and corresponding additions to Southern interests, can alone produce the proper balance of power to secure our safety, and perpetuate the prosperity, harmony, and union of the States.

With these views, we hail the annexation of Texas as a propitious event to the South and the whole country. We are in fact one and the same people. They are "bone of our bone and flesh of our flesh," identified in the same interests and pursuits like members of one family—and the separation is an unnatural one. The cultivation of peace and the promotion of the great cause of civilization and Christianity, invite in the strongest terms the annexation of the countries.

Maryland Whiggery.

We take the following editorial paragraph from the National Intelligencer:—

"We learn with great pain, but with little surprise, that the stock of the State of Maryland, which stood about two weeks ago at 82 per cent. in the market, receded, (as the prospect diminished of the passage of an act for completing the canal,) to 77 per cent.—and since the adjournment of the Legislature without having passed a bill for that purpose, or for one or two other measures of much importance to the credit of the State, has gone down to 64, and the Clipper says with 'downward tendency.'"

Now this is bordering very close on repudiation, but is so modestly told by the Intelligencer, who uses such strong and harsh terms to Democrats who are guilty of similar conduct, that you would scarcely recognize it. Repudiation, which would deserve in a Democrat all the curses of —, is as gently rebuked in a Whig as if it was a virtue—might almost pass for a duty, from the evasive terms in which it is announced.

A clamorous Whig paper in a neighboring town, complained of us for not heralding forth in great haste, the Maryland election. We might with more justice call on him to announce to the shame of his party the fact, that the Whig Congressmen from Maryland all voted in favor of Abolition petitions—and that the Whig Legislature had tarnished the State credit at home, by their repudiating acts. But these facts will be glossed over or studiously concealed by Whigs, whose censure like their praise springs from prejudice and not principle.

Lane's Case.

In our paper of last week, we mentioned the refusal of Judge Pearson to pronounce sentence upon Henry Lane, notwithstanding the certificate from the Supreme Court, directing the Court below to proceed to judgment against him.

It has since occurred to us that unless the public were furnished with a more full explanation of the matter, the present aspect of the case as well as the motives of the Judge, might be misapprehended; to obviate such a result, we have deemed it proper, to publish the opinion of the Judge filed in the case, which has been politely handed us by the Clerk.

As a want of space prevents us from publishing the whole record, it becomes necessary to the introduction of the opinion of His Honor, to state, that the prisoner was brought to the bar of the Court, whereupon the Attorney General moved for judgment against him and produced a certificate of the Clerk of the Supreme Court, with the seal of said Court, directing the Superior Court to proceed to judgment; the Counsel for the prisoner objected to the motion, on the ground, that the appeal taken by him from the judgment of the Superior Court, at the Fall Term, to the Supreme Court, notwithstanding the said certificate, was still pending in said Court undetermined: for that, the Hon. William Gaston, one of the Judges of said Court, had died, before the argument in his case was closed, and before the Court had decided, and before the opinion was delivered; and that the two surviving Judges before whom his case was argued and by whom it was decided, did not in law constitute a Court with power to hear and determine causes—and therefore, that the certificate produced by the Attorney General, which set forth the decision or opinion of the two surviving *Judges*, and not the decision or opinion of the *Supreme Court*, did not warrant the Superior Court to proceed to judgment. The objection taken by the prisoner's counsel was based on an affidavit filed by the prisoner stating the above facts.

His Honor refused the motion of the Attorney General and delivered the following Opinion:—

State vs Lane. } *Indictment for murder.*

The opinion I have formed, that the two surviving Judges do not constitute a Supreme Court, with power to hear and determine questions is founded upon this train of reasoning; which I deem it proper to file as a part of the case, that it may appear I have not differed in opinion without due consideration; for a hasty opinion under the circumstances would indicate a want of self-respect, as well as a want of respect, for those two gentlemen.

By the 6th sec. of "the act concerning the Supreme Court," "*the Court* has power to hear and determine all questions" &c.—The inquiry is, what constitutes the Court?

The 1st sec. provides for the appointment of *three* Judges to be styled Judges of the Supreme Court.

The 2nd sec. provides that *said Judges* shall hold a Court at Raleigh, twice in every year, that *they* shall continue to sit at each Term until &c. and that said Court shall be styled the "Supreme Court."

Throughout the Act a distinction is made between *the Judges of the Court* and *the Court*.

By the 7th, 10th, and 16th sec's. the Judges of the Supreme Court have power to appoint a clerk—to prescribe rules of practice for the Superior Courts—and to appoint a reporter.

By the 6th and 14th sections, *the Court* has power to hear and determine all questions—to make amendments and orders.

The Court, means the three Judges, sitting together consulting and advising, one with the others, upon questions before them for judicial decision.

The decision of the Court, means the joint opinion of the three Judges so sitting together, or the joint opinion of two, aided by the opinion and reasoning of the third, who has sit with them.

Should the three judges, severally, without consulting and advising, form the same opinion, it would be the opinion of the *three Judges;* but it would not be the opinion of *the Court*—should the three sit, consult and advise together and *two* come to a conclusion, after duly considering the opinion and reasoning of the third who differs, it would be the opinion of *the Court*, although it is not the opinion of the *three Judges*.

The distinction between the three Judges and the Court, is not a distinction without a difference. Any one accustomed to the investigation of legal questions, knows,—that in some cases, although three men when apart may come to one conclusion, yet the same three, had they been together when the question was raised, would have come to a different conclusion; and that in many cases, although two men when together come to a conclusion with which they are satisfied, yet if a third man had been present, who entertained a different opinion, the weight of his opinion and reasoning would induce one if not both of the other two to give up their opinion and adopt his.

It must be conceded, that the joint opinion of three sitting together is more apt to be correct, than the several opinions of the same three—and the joint opinion of two sitting with a third who differs and thereby causes the question to be viewed in all its aspects, is more apt to be correct, than the joint opinion of the same two without the interposition of the third—it is an even chance that such interposition will induce one of the others to change his opinion and then the result would be different.

When the Legislature gave power to *three men* to settle the law, it must be presumed to have been the intention, that they should act in the way most apt to result in a correct conclusion:—the joint opinion of three is most apt to be correct;—it is therefore *required*—an exception is admitted where one dissents;—*ex necessitate*, the opinion of two must be taken—otherwise, there would be no decision, until the constitution of the Court is changed.

This necessity does not exist when the third is dead, or absent—as soon as the Court is full, a joint opinion may be obtained—no change is required in the constitution of the Court, but simply the presence of all of it's members—to allow the opinion of two in such cases to settle the law, is a departure from the mode most apt to result in a correct conclusion, without necessity and without the aid to be expected from the presence of the third and cannot be consistent with the true construction of the act, in the absence of an express provision to that effect.

The argument stands thus—the mode most apt to result in a correct conclusion is required:—the joint opinion of the three is that mode:—from necessity, an exception is made when one dissents—Is it logical to extend the exception to cases, when *the necessity* does not exist and when there is not the test of correctness produced by the presence of the third?

It belongs to the law-making power to decide upon the expediency, for the sake of convenience, of introducing a third set of legal authorities, varying in degree—one set is the joint opinion of three—the second the joint opinion of two with a dissent—the third, the mere opinion of two

By the 4th sec. it is provided, that in the absence of one from sickness, &c. the other two may hold the Court, hear and determine questions, &c. This provision is unnecessary, or it fully sustains the view taken above—it would be strange if the Legislature should in 1834 and again in 1836, make an express provision which was uncalled for—this provision must now be taken as a part of the act, under which the Court derives its power and must have an influence upon the construction. When making provision for a case of sickness, why did not the Legislature provide for a case of death? If in the opinion of that body two of the Judges could not act as a Court, when one was absent from sickness and a provision was necessary—the same reasoning would make it as clear, if not more so, that two could not act when one was dead.

It is said that two Judges had acted in 1830, upon the death of Judge Taylor and so the Legislature concluded a provision was unnecessary—for the same reason, they might have concluded, the provision made was unnecessary: for if two could act, when one was dead, of course two could act, when one was sick. The inference to be drawn from this section is, that the Legislature being aware of the necessity of an express provision, to enable *two* Judges to act as a Court, thought it expedient to provide for a case of absence from *sickness*, or other *inevitable cause*, which not creating a vacancy, might leave the business undetermined for an indefinite time; but did not think it expedient, so to provide in a case of *death*, or *removal* from office, which created a vacancy, that it was presumed would be promptly filled:—for it was considered an uncalled for departure from the principle requiring the law to be settled in the mode most apt to result in a correct conclusion.

If analogy be resorted to in aid of the construction, it is found that in all commissions of Oyer and Terminer, Courts of Admiralty, &c., this clause is inserted, "*si omnes interesse non possitis tunc vos tres.*" &c.; from which the inference is that, but for this proviso, *all must act*—The Courts of King's Bench and Common Pleas, are by usage, held by some of the Judges in the absence of others, which usage justifies the inference, that a clause equivalent to the "*si omnes*" was contained in the original commission or act of Parliament under which they derive authority—vacancy is promptly attended to. Our County Courts are to be held by the Justices of the County—there is an express clause authorizing *three* to act equivalent to the "*si omnes*," but for this, it is presumed all would be required to act and if all were sick or dead but two, they would not be authorized to act as a Court.

"Arbitrators form a Court of the parties' own choosing"—if a submission be made to three, the award of a majority to be binding, should the three separately give an opinion, although they agree, it is no award—should the two meet in the absence of the other and agree, it is no award—if one dies the submission is at an end

Much stress is laid on the fact, that Judges Henderson and Hall, after the resignation of Judge Toomer and before Judge Ruffin took his seat, acted as a Court:—it is understood the matter passed without discussion—they did not hear and determine a single case and the matter did not afterwards present itself for decision to the three Judges holding the Court. The question being, have two authority to act as the Court, it is taking the question for granted (*petitio principii*") to urge that two did act, as an authority or precedent to settle the question—the most that can be yielded to it is, that two learned men were of the opinion, that two of the Judges could pass orders, &c. after the third was dead and do what they did as a Court—this it must be recollected was before the act of 1834 and the act of 1836, in which the provision is retained.

The fact, that the two surviving Judges after the death of Judge Gaston came to the conclusion that *they* could act as a Court and did proceed to hear and determine questions and did so, in this particular case, cannot be admitted as an authority binding in law, without taking for granted the question about which, there is the difference of opinion—the most that can be yielded to it, is, that two learned men for whom the highest respect is entertained acted upon that opinion.

Should the Supreme Court, when constituted of the three Judges of said Court, sitting together as a Court, in the case which is now presented, decide that two of the Judges, upon the death of one, have power to act as a Court and to hear and determine cases such decision will be the law and be yielded to as an authority.

Richmond M. Pearson, J. S. C. & E.

Mr. Clay.

The following notice from a New Orleans paper, shows how Mr. Clay is appreciated in his electioneering tour, through the country. He is now about to try the experiment in No. Ca., and we shall see whether we are to be blindfolded and led in servile pomp over our own rights, to support the pageantry of Henry Clay.

Mr. Clay made a few remarks to a congregation of his party, a few days, or one day, before he left New Orleans, in which he said, "I will tell you that from all quarters—from the farthest corners of Maine, to the extremest points of Louisiana—the signs of the times are propitious, and not a speck obscures the horizon"!!!

The Fayetteville Carolinian remarks:—He is no prophet! For the words had hardly died upon the ears of the auditors, (he said it on the 23d and on the 26th the election took place) when a woful defeat of his party was announced. May such death strokes attend all his deceitful harangues. The whigs of North Carolina may shake in their shoes after that.

Congress.—In the Senate, on the 14th inst. Mr. Haywood gave notice that he would, at an early day, introduce bills to retrench the expenses and to check the proscriptive spirit in our government.

In the House of Representatives, on the 13th, Mr. Dromgoole, from the Committee of Ways and Means, acting under the authority of a resolution of the House, reported a bill providing for the collection, safekeeping, transfer and disbursement of the public revenues, which was accompanied by a report. The bill was read twice, referred to the Committee of the Whole, and ordered to be printed.

From the Raleigh Standard.

Council of State—Persuant to the call of the Governor, this body assembled in this City on Monday last, the 18th instant. A quorum was present, consisting of Messrs. Cameron, Fitts, Holmes, and Watt. At their session on Monday, we learn that they confirmed the nominations of Messrs Caldwallader Jones, Sen and Frederick Hill, as members of the Board of Internal Improvement.

On the same day, we understand the Governor nominated for Judge of the Supreme Court the Hon. George E Badger of this City, which nomination was *unanimously rejected* by the Council. But on Tuesday, (yesterday) the nomination of the Hon. Frederick Nash, of Hillsborough, to the Supreme Court Bench, was confirmed; whereupon the Council adjourned without day. If Judge Nash should accept the appointment, we presume the Council will be again called together for the purpose of filling his vacancy on the Superior Court Bench.

Secretary of State.—The Washington correspondent of the New York Evening Post, under date of the 13th instant, says, "it is ascertained that Mr. Calhoun has accepted the appointment tendered him as Secretary of State. Intelligence to that effect was received this morning." We hope it may turn out to be true. The whole country seems to desire that Mr. Calhoun should accept.—*ib.*

Executive Appointments.—Chancellor Walworth, of New York, has been appointed by the President, by and with the advice and consent of the Senate, Associate Justice of the Supreme Court of the United States; and John Y. Mason, of Virginia, has been appointed Secretary of the Navy, *vice* Mr. Gilmer, deceased.—*ib.*

FOR THE TARBORO' PRESS.

Solution of the Geographical Enigma in last number—Rome; Ida; Coosa; Harris; Aar; Rhodes; Dee; Shiras; Oder; Mocha; Erie; Rhe; Siam;

RICHARD SOMERS.

J. H. B—r.

☞We are authorised to announce LOUIS C. PENDER, as a candidate at the ensuing election for the office of Sheriff of this country.

☞We are authorised to announce JESSE MERCER, as a candidate at the ensuing election for the office of Sheriff of this county.

COMMUNICATED.

Rt. Rev. *Bishop Ives* is by appointment to preach on the 20th and 21st April, (second Sunday after Easter,) in Calvary church, Tarboro'.

Rev. *Mr. Cheshire* will preach on Good Friday, the day preceding the above.

Elder James Osbourn is expected to preach in Tarboro' on the 6th and 7th of April, and at the Falls Tar River on the 13th and 14th.

☞Rev. *Thos. L. Carter* will preach on the 1st Sabbath in March at Weldon; 2nd Sabbath and Saturday before at Jackson, Northampton county; 3rd Sabbath, at Lee's Chapel, Bertie county; 4th Sabbath and Saturday before, at Tarboro'; 5th Sabbath and Saturday before, at Hardaway's.

FOR THE TARBORO' PRESS.

Mount Moriah, March 17, 1844.

Departed this life on the evening of the 15 inst. *Mary Jane*, daughter of Dr James J. and Harriet Philips, aged four years.

It is with feelings of the deepest sympathy and regret, that I communicate thro' your columns to the public, the death of one who was so much beloved by all who knew her. She grew sweet to loveliness, and death like a frost on a spring morning, came and nipped the flower in the bud. She was beautiful, her beauty consisted not only in the symmetry of her form and features, but of her mind and disposition. Here I may unite with the poet, where he says—

Ah, if so much of beauty pours itself into the veins of life,
How beautiful must the fountain be;
The bright, the eternal.

From her infancy up to the time that she died, she was undoubtedly the most interesting and affectionate child that we have ever seen. Her presence has caused many a pure joy to blossom in her father's house, and her departure thence has caused many hearts to sob with the most bitter sorrow; such sorrow I am sure they have never felt before. Her fortitude during her suffering was more like that of an adult than that of a child, it seemed that an angel was moving about her couch of suffering, ready to speak peace to her soul. She has left a kind and indulgent father and an affectionate mother and two aunts, besides numerous friends and acquaintances to lament her loss.

Tho' gone to those realms of happiness and peace,
Promised by our Maker divine,
A resting place in my memory,
Thou shalt never cease to find. J.