

# SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

WHAT DO WE LIVE FOR, BUT TO IMPROVE OURSELVES AND BE USEFUL TO ONE ANOTHER?

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**SOUTHERN CITIZEN,**  
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## Legal Department.

ASHBOROUGH, N. C.  
Saturday, Jan. 28, 1837.

### ATTACHMENT, &c.

In the County of Lincoln, one John H. Harry sued out an attachment against one John B. Dunn, (an absconding debtor,) returnable before a single Justice, on the 7th day of January 1832; and summoned one William Boydton garnishee; who attended accordingly, on the return of the attachment, and rendered his garnishment, admitting that he had in his hands money of the defendant Dunn, to the amount of the plaintiff's claim. Consequently, Judgment conditional was rendered against the defendant, in favor of the plaintiff; and Judgment absolute against the Garnishee for the amount he had in his hands, condemned to the use of the plaintiff, provided he succeeded in obtaining final judgment. On the 7th of February, at the end of 30 days advertisement according to law, when the plaintiff went to take final judgment, one Samuel P. Simpson interposed a claim of his, that he considered had the preference, as it arose under the following circumstances:

Dunn, the absconding debtor, had obtained a judgment against one McLelland, and, being indebted to Simpson, had, on the 24th of December previous, assigned it to him, (Simpson) giving him at the same time a written order to the Constable (who was supposed to have it in hand) to deliver up the said judgment to Simpson. But the constable, having left the paper with the justice, gave a further order to him, the justice; who was not at home when Simpson applied. It appeared that McLelland had requested the Justice to keep the judgment in his hands, for he intended to pay it before the stay run out; and accordingly called to do so; but the Justice was still from home, having gone out of the State. But Boydton, being a partner with him in a Store, had access to the papers—received the money, and gave up the judgment. This is the same money that Harry claims by virtue of his attachment; and Simpson claims it by virtue of the bona fide transfer to himself on the 24th of December. It is to be further noted, that Simpson never applied to Boydton for the money till after the Garnishment was rendered; and when being refused, he preferred his claim as above stated.

and Simpson appealed to the County Court; thence to the Superior Court, where the case was tried before Judge Settle, Spring term 1835. His Honor charged the jury, that Simpson's claim was but an *equitable* one, and consequently, could not be set up against the legal claim of the plaintiff in attachment. Verdict and judgment for Harry; and Simpson appealed to the Supreme Court—Tried June term 1835. Judge Gaston delivered the opinion of the Court, from which we collect the following points of law:

1st. These proceedings were not strictly regular; for the magistrate had no right to adjudge the matter at all. It was an *Interpleader* (as it is called in law,) between Harry and Simpson; which a single Justice cannot try.  
2nd. The word "appeal," in the Act of 1794, Sec. 9, is not to be understood in its technical sense; but means simply the removal of the cause to a Court where the controversy can be tried.  
3rd. As no advantage was taken of this irregularity in the County Court, it is not to be allowed in the Supreme Court.  
4th. The charge of the Superior Court was correct. Judgments are not assignable at law; and however the transfers of them may be protected in a Court of Equity, they unquestionably pass no *legal interest*.  
5th. The receipt of the money by Boydton, did not create a legal debt from him to Simpson. And if there had been, on his part, a promise to pay (which would have created debt,) still it is unconnected with Harry's attachment, and cannot defeat him.  
6th. If a Trustee, who is summoned as garnishee, renders his garnishment without disclosing his trust, the plaintiff in attachment has a right to it. For no one can, [in this stage of the procedure] protect the trust, but the trustee himself. Yet if the trustee, in so doing, acts fraudulently towards *cealuy que trust* (the person for whose benefit the trust was made,) he is clearly liable to an action from that quarter. But in the present case, this could only be a question to be decided in another suit by Simpson against Boydton.

From all which, we think it clear, that Boydton, as soon as he received the money, became the trustee of Dunn; and if he, (Dunn) had received before he absconded, it would have made him trustee for Simpson. But as the case was circumstanced, Simpson had no remedy, but by attachment against Dunn, so as to obtain the Garnishment of Boydton.  
Wherever a garnishee makes such a statement of facts as renders it doubtful whether he is indebted to the defendant or not; or wherever a dispute arises as to the right of property attached;—in either case, it is the duty of the magistrate, not to give judgment either way, but to return all the papers to the next County Court, to be tried by a Jury. For all the necessary forms used in practice, relative to attachments returnable before a Justice.—See "Man of Business" vol. 1 page 33—30.

### WARRANTING FOR AN ANNUITY.

Mary Hamilton, of the County of Rutherford, hired to Morris McCarty a slave, at \$80 a year, to be paid annually for 9 years; the slave to be well fed; clothed, &c. The parties entered into a covenant under both their hands, and seals specifying this agreement. The question was, whether she could recover the hire by warrant before a

magistrate, or whether she must bring her action in Court on the covenant. The warrant was for 60 dollars, stated to be a "debt due by bond." The Supreme Court held [June term 1835,] that she had her election, either to sue in Court on the covenant, or proceed by warrant, as she had done. *And she recovered.*

It is to be remarked however, that had the covenant set forth an entire debt to be paid by instalments, a Justice of Peace would have had no cognisance.

It is important for magistrates to understand distinctly, the difference between an entire debt, or gross sum, to be paid by instalments; and a series of annual, or other periodical payments, stipulated to be made. For in the former case, you must sue on the whole contract together; and in the latter, you may sue, (or warrant as the case may be) on each failure separately.

### DOWER.

1st A widow is not barred of her dower by the Statute of limitations.  
2nd. She is not entitled to damages for the detention of dower, until after she has made a demand.  
3rd. It is doubtful whether any legal demand of dower can be made in this State, but by petition according to Act of Assembly. See the case of Richard Spencer & wife vs. Benjamin Weston's heirs & others, from Hyde County.—1 *Devereaux & Battle*, 213.

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### LEGISLATURE.

#### SENATE.

Thursday, Jan. 12.  
The following engrossed bills and resolutions passed their three readings, and were ordered to be enrolled: The bill concerning the county of Davie; and the bill to lay off and construct a road from the town of Franklin, in Macon county, to Valley river, and thence to the Georgia line; the resolutions, in favor of Edward Swanly—of George Hoover—and authorizing the Governor to make provision for receiving the surplus revenue.

#### HOUSE OF COMMONS.

Mr. Rayner from the committee on Claims, reported unfavorably on the resolution in favor of David Falton; also, on the resolution in favor of Thomas Dickens, and on that in favor of James Caulte. The first resolution was laid on the table, and the two last postponed indefinitely.

On motion of Mr. Moore, Resolved, That the Speaker of the Senate & Speaker of the House of Commons be and are hereby authorized to employ two competent persons to examine the enrollment of the bills, passed by both Houses of the General Assembly at its present session, for re-enacting and a-

mending the Statute Laws of the State as revised; and the persons employed shall be paid, not exceeding nine dollars per day to each, such sums as may be agreed on by them and the Speakers of the two Houses.

Resolved further, That the acts aforesaid shall not be ratified until they are examined and certified by the committee on Enrolled Bills, and also by the two persons employed under the foregoing resolution. These resolutions were read three times, passed, and ordered to be engrossed.

The House then proceeded to the orders of the day, and resolved itself into a committee of the Whole, Mr. Hoskins in the Chair, on the bills to amend the Charter of the Cincinnati & Charleston Rail Road Company, and to confer Banking Privileges on said Company.

The Hon. Mr. Memminger, of South Carolina, who had been invited to appear before the House, rose and addressed the committee at length in support of the bills; after which, the committee rose, reported progress, and obtained leave to sit again.

#### SENATE.

Friday, Jan. 13.  
Mr. Reid, from the joint select committee on the subject, reported a bill prescribing the manner in which contested elections of Governor shall be determined in this State; which passed its first and second readings.

The Senate was engaged the remainder of the day, in committee of the Whole, in discussing the bill to provide for the investment and safe keeping of the surplus, &c without coming to a decision.

In support of the resolutions submitted by him on yesterday, Mr. Bryan of Carteret and Jones delivered his views at length, insisting that it was our true policy to engage in an enlightened and liberal system of Internal Improvements.

Mr. Kelly addressed the committee also, enforcing the same policy.

#### HOUSE OF COMMONS.

The bill to alter the dividing line between the counties of Bladen and Columbus, was, on motion of Mr. Gillispie, indefinitely postponed.

Mr. Farrow presented a bill to provide for draining Miltamuskeet Lake in Hyde county (Appropriates \$3,000 for this purpose)—Read first time.

Mr. McRae, from the committee of Internal Improvements, reported the resolution in favor of the Oconalufy Turnpike Company, with an amendment. The report was concurred in.

Mr. McRae, from the same committee, reported unfavorably on the resolution of inquiry into the expediency of the State purchasing up the stock in the Turnpike Road from Ashville to the Tennessee line. Concurred in.

The House then resolved itself into a committee of the Whole, Mr. Hoskins in the chair, on the bill granting banking privileges to the Charleston and Cincinnati Rail Road Company. Mr. Speaker Haywood took the floor, in reply to Col. Memminger, and in opposition to the bill, and spoke for nearly three hours. When he concluded, the committee rose, reported progress and obtained leave to sit again, when the House adjourned.

#### SENATE.

Saturday, Jan. 14.  
The engrossed bill concerning the

depositions of persons confined in Jail, and the engrossed resolution in favor of the Oconalufy Turnpike Company were read three times, passed and ordered to be enrolled.

The bill prescribing the manner in which contested elections of Governor shall be determined in this State, was read and ordered to be engrossed.

Mr. J. W. Bryan, from the Judiciary Committee, reported against the expediency of altering the times of holding the Courts in the Edenton district. Concurred in.

Mr. Baker presented a resolution, instructing the committee on Internal Improvements, to inquire into the expediency of making an appropriation of — dollars, to complete the road from Morganton, across the great Iron Mountain, into Tennessee; which was adopted.

The engrossed bill to incorporate the Hiwassee Turnpike Company, was rejected on its third reading.

The remainder of the day's sitting was taken up in the consideration of Mr. Edwards' bill to provide for the investment and safe keeping of the surplus. The question pending was on the proposition of Mr. J. W. Bryan, to strike out all except the enacting clause, and insert a substitute; which was negatived. Other ineffectual propositions were made to amend and to postpone indefinitely; and the bill was finally laid upon the table.

#### HOUSE OF COMMONS.

The engrossed bill to amend the charter of the Portsmouth and Roanoke Rail Road Company, was read the third time, and, on motion, referred to a select committee, consisting of Messrs. Gary, Gales and Faison.

Mr. Gales presented a Resolution providing for the payment of the expenses incurred in burying Geo. W. Montgomery, a member of the Legislature, which passed three readings and was ordered to be engrossed.

Mr. Gales introduced a bill authorizing and empowering the County Courts of the State to appoint Special Magistrates in incorporated Towns—Read first time.

The House then again resolved itself into a Committee of the whole, Mr. Hoskins in the Chair, on the bills in relation to the Charleston and Cincinnati Rail Road Company.

Mr. Hoke took the floor in reply to Mr. Speaker Haywood, and addressed the committee for more than an hour, decidedly in favor of the bill. When he concluded, Mr. Graham rose and addressed the committee for more than two hours, also in favor of the bill, he was followed by the speaker, in reply to him and Mr. Hoke, in a short but animated Speech. Mr. Blount then made a few remarks against the bill, and, Mr. McNeil explained, why he had come to the conclusion to vote against it.

The question being loudly called for, it was put on the motion submitted by the speaker, to strike out the enacting clause of the bill, (tantamount to rejection,) and decided in the negative.

On motion, the committee then rose and reported the bill to the House, and the question being on its passage, an amendment was moved to it, so as to give the next Legislature the power, if it should choose, to repeal the bill without the consent of the corporation. This amendment was negatived 62 to 0; after which the bill passed its second reading 53 to 49; and then the House adjourned about 5 o'clock.