

SOUTHERN CITIZEN.

BY BENJAMIN SWAIM.

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

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SOUTHERN CITIZEN,

By B. Swaim.

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Legal Department.

ASHBOROUGH, N. C.

Saturday, Feb. 11, 1837.

QUESTION BY A SUBSCRIBER.

"Is a Justice of the Peace prohibited absolutely in all cases from giving legal advice? If not, please to give us some general directions touching the prohibition contained in a certain clause of a magistrate's oath."

Answer. This we do with pleasure, as it is very evident that magistrates sometimes become not only counsel, but advocates for one of the parties. And on other occasions, they stop short of their duty, from a squeamish notion that they are forbidden to advise a client in his matters on any occasion.

The prohibition is in these words: "I will not either openly or privately, by myself or any other person, be of counsel in any quarrel or suit depending before me." So that when you are consulted in a prudent manner, about either a quarrel or a suit, if it is not depending before you, it is your duty, at least your privilege, to give advice, especially if the subject matter be clear to your apprehension, so that you can safely advise, without leading the applicant into error.

It often happens that an unenlightened neighbor wishes to know some point of practical law, connected with his interest, or perhaps from mere curiosity, where there is no quarrel or suit depending; and in this case, he has a right to expect all the information you can give.

But there is one practice that is highly reprehensible, as it tends directly to pervert the administration of justice; and it is a practice that men will indulge themselves in if permitted; that is, going to a magistrate beforehand to consult his opinion on points intended to be subsequently presented for legal adjudication. And after bespeaking a favorable sentiment in advance, the returning officer is apt to be instructed where, and before whom to return his process. To a magistrate of any sensibility, applications of this kind must be very humiliating; and should invariably be met, & resolutely put down. Or if he should condescend to make any discovery of an opinion, and the case afterwards should, through design or otherwise, come before him, he will refuse to act officially. However firm and guarded a man may think his own integrity, but few have the power to resist effectually the influence of that se-

cret bias which is but too apt to follow an inclination of opinion, especially if it shall have been audibly expressed.

That magistrates, from the terms of the oath, are prohibited from giving counsel in cases that are expected to arise, as well as those already on hand, is evident from the word *depending*; which is used to signify *in expectancy*, whether process be commenced or not. Had it been intended to be confined to such cases only as were actually in suit, it would have been expressed by the word *pending*, in stead of *depending*; for the former is of more limited signification, meaning only hanging in suspense.

While reflecting on this subject, one thing occurs to us as proper to be mentioned, with regard to the moral responsibility of a Justice in giving judgment.

Some are in the habit of speaking and acting as though their responsibility were less, in consequence of the right of appeal, that each party has, being dissatisfied with the decision. "It is not so much difference how I give judgment, since it can be corrected, if wrong, by appealing to Court." It ought to be constantly borne in mind, that if you give a wrong judgment, or which is the same thing, a judgment not supported by the law of the country, you deprive one of the parties of his rights in the same degree (though perhaps not to the same extent) as though you had made a final determination of the controversy; for he must then either abandon his legal rights, or else subject himself to much trouble and expense in asserting them. The best general rule that we know of is this:—Always act with that caution and deliberation, which a conscientious man would feel, if he knew his decision was to be final.

Kindness continued will often work on the most obstinate.—A benevolent old man, called Cleon, who had an only son, with whose education he had taken the greatest pains, saw with regret, the nearer he approached to manhood, the more he wandered in the paths of error. Carried away by the violence of his passions, he listened only to the insidious voice of pleasure, blind to his excesses, and deaf to repentance, every day was marked by vice and folly.

Remonstrances, threats, promises, complaisance, and rigor, in short, all that love and wisdom could invent, had no effect upon his inflexible heart, and he pertinaciously adhered to his former courses. "Cruel Gods!" cried the old man, while the tears rolled down his reverend cheeks. "Why have you given me a child so abandoned? Take back your fatal present, or take from me the affection of a father; his sight is poison to me, and destroys the happiness of the few moments I have yet to live." Then turning to the unworthy youth, "Fly from me, monster! far as the poles convey thy wretched being, I stifle the voice of nature in my heart, never see me more: happy would it be for mankind, if a sudden stroke of death, would prevent thee from adding another crime to those thou hast already committed and hid from the world my shame and sorrow!"

At these words, though a tempest had arisen, and ravaged the country, Cleon thrust his son out of doors. The youth parted with an air of despondence; and the father following him with his eyes, was suddenly struck at seeing him proceed towards a house which had

been damaged by the storm, and from which the tiles were tumbling in great numbers. His anger was immediately forgot; distracted for the safety of his child, he called him back: "Avoid that house," said he, "nor loose your life until you are fit to die."

The heir of Cleon was so moved with this proof of his father's affection, that it occasioned an alteration of his conduct, which produced the happiest result.—*Addison's Anecdotes.*

From the Cincinnati Register.

Things that I have seen.—I have seen the time when the only boat that floated on the surface of the Ohio, was a canoe, propelled by poles used by two persons, one in the bow and the other in the stern.

I have seen the day, when the introduction of the keel boat, with a shingle roof, was hailed a mighty improvement in the business of the west.

I remember the day when the arrival of a Canadian barge (as the St. Louis boats were called at the head of the Ohio) was an important event in the transactions of a year.

I remember the day when a passage of four months from Natches to Pittsburg, was called a speedy trip for the best craft on the river and when the boatmen, a race now extinct, leaped on shore after the voyage, and exhibited an air of as much triumph, as did the sailors, of Columbus on their return from the new world.

The Shakers.—Amidst all the singularities of the Shakers, they have some rules which it would be well for the people of all denominations to adopt. It is contrary to order, or the gift, as they call it, (says Professor Silliman) to leave any bars down or gates open, or to leave any thing they use out of its proper place; consequently, they never have any thing lost. Cleanliness in every respect, is strongly enforced. A dirty, careless, indolent person they say, cannot travel in the way of God, or be religious. It is contrary to order to talk loud, to shut doors hard, to spit on the floor, to make any unnecessary noise. Every man and woman must be employed and work steadily. Trifling as these rules may appear, their adoption would have a very important effect upon any household or community.

Ral. Reg.

Mortality in New York in 1835.—There were 8003 deaths in the city of New York last year, being 929 more than in 1835. In 1835 the deaths, according to the population, was one out of every thirty eight, and in 1836 one out of every thirty four.

Of the whole number of deaths last year, 1,514 were by consumption—being 735 more than by any other one disease. The indefinite term Convulsions has the next highest number of victims, 778, assigned to it. Far the greatest proportion were children under one year, the number being near 3000. The greatest mortality was in the months of August and September. Of deaths by consumption, there is an increase upon those of 1835, of 67; the number in 1835 was 1449—in 1836, 1514.

The mean depth of the Pacific Ocean is supposed to be about four miles, that of the Atlantic three.

The First Visit to a Married Child.—Generally speaking, if there is a moment of unmixed happiness, it is that in which parents pay their first visit to a married child, and in which children receive the first visit from their parents. The pretty, half childish half matronly pride with which the young wife does the honors of her domestic arrangements; the tearful joy of the mother as she inspects and admires; the honest happiness of the father; and the modest exultation of the bridegroom, who has installed the creature he loves in all the comforts with which she is surrounded—render the moment one of pleasing interest to the most careless bystander.—*Tales of the Peerage and the Peasantry.*

EXPUNGING RESOLUTIONS—SPEECH OF MR. WEBSTER.

The debate having closed, and the question being about to be taken, Mr. WEBSTER rose, and addressed the Senate as follows:

Mr. President.—Upon the truth and justice of the original resolution of the Senate, and upon the authority of the Senate to pass that resolution, I had an opportunity to express my opinions at a subsequent period, when the President's protest was before us. Those opinions remain altogether unchanged.

And now, had the Constitution secured the privilege of entering a Protest on the journal, I should not say one word on this occasion; although, if what is now proposed shall be accomplished, I know not what would have been the value of such a provision, however formally or carefully it might have been inserted in the body of that instrument.

But, as there is no such constitutional privilege, I can only effect my purpose by thus addressing the Senate; and I rose therefore to make that PROTEST in this manner, in the face of the Senate, and in the face of the country, which I cannot present in any other form.

I speak in my own behalf, and in behalf of my colleague; we both speak as Senators from the State of Massachusetts, and as such we solemnly Protest against this whole proceeding.

We deny that Senators from other States have any power or authority to expunge any vote or votes which we have given here, and which we have recorded agreeably to the express provision of the Constitution.

We have a high personal interest, and the State whose representatives we are, has also a high interest in the entire preservation of every part and parcel of the record of the Senate.

This record the Constitution solemnly declares shall be kept; but the resolution before the Senate declares that this record shall be expunged.

Whether subterfuge or evasion, and, as it appears to us, the degrading mockery of drawing black lines upon the journal, shall or shall not leave our names and our votes legible, when this violation of the record shall have been completed, still the terms "to expunge," and the terms "to keep," when applied to a record, import ideas exactly contradictory; as much so as the terms "to preserve" and the terms "to keep" when applied to a record, import ideas exactly contradictory; as much so as the terms "to preserve" and the terms "to destroy."

A record which is expunged, is not a record which is kept, any

more than a record which is destroyed can be a record which is preserved. The part expunged is no longer part of the record; it has no longer a legal existence. It cannot be certified as a part of the proceeding of the Senate for any purpose of proof or evidence.

The object of the provision in the Constitution, as we think, most obviously is, that the proceedings of the Senate shall be preserved in writing, not for the present only, not until published only, because a copy of the printed journal is not regular legal evidence; but preserved indefinitely; preserved, as other records are preserved, till destroyed by time or accident.

Every one must see that matters of the highest importance depend on the permanent preservation of the journals of the two Houses, what but the journals show that bills have passed into laws, through the several stages; what but the journal shows who are members, or who is President, or who is Speaker, or Secretary, or Clerk of the body? what but the journal contains the proof necessary for the justification of those who act under our authority, and who, without the power of producing such proof, must stand as trespassers? What but the journals show who is appointed, and who is rejected by us, on the President's nomination; or who is acquitted, or who is convicted, in trials on impeachment? In short, is there, at any time, any other regular and legal proof of any act done by the Senate than the journal itself?

The idea, therefore, that the Senate is bound to preserve its journal only until it is published, and then may alter, mutilate, or destroy it at pleasure, appears to us one of the most extraordinary sentiments ever advanced.

We are deeply grateful to those friends who have shown, with so much clearness, that all the precedents relied on to justify or to excuse this proceeding, are either not to the purpose, or, from the times and circumstances at and under which they happened, are no way entitled to respect in a free Government, existing under a written Constitution. But, for our lives, we stand on the plain words of that Constitution itself. A thousand precedents elsewhere made, whether ancient or modern, can neither rescind, nor control, nor explain away these words.

The words are, that "each House shall keep a journal of its proceedings." No gloss, no ingenuity, no specious interpretation, and much less can any fair or just reasoning reconcile the process of expunging with the plain meaning of these words, to the satisfaction of the common sense and honest understanding of mankind.

If the Senate may now expunge one part of the journal of a former session, it may, with equal authority, expunge another part, or the whole. It may expunge the entire record of any one session, or of all sessions.

It seems to us inconceivable how any men can regard such a power, and its exercise at pleasure, as consistent with the injunction of the Constitution. It can make no difference what is the completeness or incompleteness of the act of expunging, or by what means done, whether by erasure, obliteration, or defacement; if by defacement, as here proposed, whether one word or many words are written on the face of the record; whether little ink or ever washed on the paper; or original writing, or the whole, if any possibility be ten Journal may be done by an act to be traced. If not out, to obliterate, to expunge record, then the record is expunged, blotted out, obliterated, and