

SOUTHERN CITIZEN.

BY BENJAMIN SWAIM.

WILL 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.

INDEPENDENCY OF THE LAW EXCEPTS NO MAN.

ASHBOROUGH, N. C.

Saturday, March 11, 1837.

INTEREST.

North & Prescott vs. Mallett.

Case for money due by two notes of hand payable January, 1784.—Payments were made in part by two notes in 1783, also there were several other payments, and in 1785 a payment was made to the amount of the principal, and an offer was then made to pay any balance which might be then due, if the plaintiff would agree to credit to the amount of the notes, which he refused. It was stated by counsel that a calculation had been made by agreement, and that on the 20th May, 1785, when Mallett offered to close the accounts, 320 dollars & 60 cents were due as interest and not as principal, and to calculate interest on that sum would be giving interest on interest. To support this position he stated, that the mode of calculating interest at the time this contract was entered into, and during the whole transaction, till May, 1785, was to find the interest on the principal sum till the time of settlement, and the interest on the several payments from the day on which they were made, to the time of settlement also, and then to strike the balance. Pursuing this method in the present case, as the several payments made amounted to more than the principal, the balance due on the 20th May, 1785, must certainly be considered as interest merely. And although the rule for calculating interest has been since altered, and that what is here contended for was erroneous in principle, yet as it was the mode in use when the parties contracted and paid, it ought now to be adhered to.

Per curiam, HALL, Judge. The payment ought in the first place to be applied to the discharge of the interest accrued, and if a balance of payments remains then to deduct it from the principal. If the plaintiff received the notes as payment the defendant should be credited from the day of the receipt, otherwise it is, if he only made them his by delay and keeping them in his possession. The defendant may stop interest when he pleases by tendering the principal and interest, but it is not a legal tender to say, here I am ready: he must have the money ready also.—2 Hayw. 151.

M'Kinlay vs. Blackledge.
Case upon a promissory note to

pay at the expiration of seven years from the date, without interest; the seven years elapsed more than two years ago.

Baker, for the defendant, contended that the plaintiff ought not to recover interest nor be allowed damages for it, the party having expressly provided that he should not be liable to interest.

Per curiam. Haywood and Stone, Judges.—This contract was made upon an expectation that it would be performed at the expiration of the seven years, and the words "without interest," are applicable to the seven years; they cannot be supposed to extend to the case of a delay of payment after that time; interest is allowable for the delay of payment after that time.

There was a verdict accordingly.
2 Hayw. 28.

Freeland, Assignee vs. Edwards.

Debt upon bond, with a penalty, conditioned to pay without any time mentioned; and the question was, from what time interest was to be calculated.

Haywood, Justice.—The rule is fixed, that bonds payable without any certain time mentioned, are payable *instanter*, and bear interest immediately from the delivery.

Davie.—I wish we could have the reason upon which these determinations have been founded, that we might examine them and see whether they be good or not. A bond payable on demand, is payable immediately, and may be sued upon immediately, without any previous demand made for that purpose.—The same in the case with a bond payable on so certain day mentioned in the bond. I believe the British determinations have concurred with ours on this subject, but really I can perceive no good reason for the distinction. Our own act directs that bonds payable on demand shall bear interest from the demand; by the same act an account stated & signed, bears interest immediately from the signature.

Haywood, Justice.—The reason of the distinction is this; in case of a bond payable without saying when, the obligee has not to do any act either to entitle himself to the action, or to the interest; in case of a bond payable on demand, he undertakes to make a demand, otherwise the words, on demand, have no meaning; and if a demand is to be made it is for some purpose; it is not to entitle himself to the action; therefore it must be to give a right to demand interest. The act of Assembly proceeds upon this very principle; it says a note payable on demand shall bear interest from a demand made. When speaking of an account signed, it says, interest shall accrue from the signature; yet on both instances an action may be brought immediately without any formal demand; but if we could not give the reason of the decision, yet we know the rule is so established; it is therefore far better to make it the standard of our adjudications than to render the law again uncertain by departing from it.

There was a judgment accordingly for interest from the date.
2 Hayw. 49

A debtor who is ready to pay his debt when it becomes due, is excused from paying interest thereon, if the creditor conceals his place of residence, and the debtor know not where to apply to make payment. *Child vs. De-vaux, 1-Mar. 393.*

A bond was given before the Revo-

lutionary war for a certain sum, *proclamation money*; during the war a tender was made in paper money, but before the paper money depreciated.

In 1798, application was made for payment, suit was instituted, and judgment recovered. The defendants at law filed their bill in equity to be relieved from the payment of interest, from the time of the tender to the time application was made for payment, in 1798, and charging in their bill that they knew not where the bond was, until this application for payment was made. Complainants are entitled to be relieved against them, from the time of the tender to the demand for payment; for at the time the tender was made, paper money was a legal tender, and it had not depreciated. *Greter & Greter vs. Executors of Lit. John, 3 Murph. 156.*

Fayetteville and Western Rail-Road

We respond heartily to the suggestion of our Fayetteville friends, that there will in the end, be a perfect union of opinion on the subject of locating the Rail Road. We learn that the route designated in the conditional subscription will be surveyed: we learn also that a scientific gentleman who travelled over it and our other route with a view of forming a general conclusion as to the face of the country, has made a statement that gives us little anxiety as to the result.

We have received private letters from Fayetteville, complaining in some degree, of the course pursued by the Salisbury meeting, but if these gentlemen will consider for a moment, they must be convinced that our course was perfectly fair and reasonable; The act of Assembly which awards to us the subscription of 2-5, only does so on the contingency of a route being surveyed, and the cost being ascertained: we understand the operations of Maj M'Neils agents to be with a view of making that survey and estimate, in other words, of fixing the location of the road as it will finally run.—The stockholders that now come in, it is plain therefore, will have had no agency or influence in this measure, unless they can be heard through their condition. They will have been without a voice in the appointment of the President, Directors, Superintendants or Surveyors. They are unwilling to put themselves entirely at the mercy of strangers, even though they have them reported of most favorably: that they are willing to do so to a considerable extent, is a degree of faith and confidence, we think highly complimentary to these strangers, and evincive of zeal and liberality in themselves.

The difficulty in fact grows out of vagueness in the charter, which unlike all others we ever heard of, has no distinctive points of general direction. Fayetteville, it is true, is called for at one end in the enterprise and some point above the Narrows at the first resting place towards the western end: where that some point is, or may be, in all the scope of country between the Narrows and the head branch of the Yadkin is most indefinite: it is a question that most materially affects the agricultural interests of those in the valleys of the Catawba and the Yadkin, who are called on to subscribe. They think too, that it will materially affect the value of the stock: before they commit themselves they would like to know how this vast latitude of discretion is to be used—they would like at least to have a voice in its exercise: and as they are now cut off from every other mode, some of us have attempted to do so in this conditional way: Surely there is nothing contracted or illiberal in this.

This difficulty would have been avoided in a great measure, if the Banks had not been opened until after the Engineers had reported: even as it is, we trust, and confidently believe, it will be removed as soon as a report is made—something distinctive will then be presented to our people; and if it is at all favorable to our wishes, the conditional subscription will be an absolute one, and will be swelled to an amount that will do credit to our citizens. The

great ardor and public spirit manifested every where, assures us that no temporary discordance can frustrate the great work—a moderate share of the spirit of concession will make all things right again, and where there is so much zeal we cannot doubt the existence of that spirit.—*Watchman.*

METHODIST CONFERENCE.

The Virginia Annual Conference of the Methodist Church met at Petersburg, on the 8th of February, and continued in session until the 20th of the month. Bishop Waugh, of Baltimore, presided. What has been for many years, called the Virginia Conference, is now divided into two Conferences—the Roanoke River being the dividing line between them. The next Virginia Conference is to meet at Richmond, and the North-Carolina Conference, at Greensboro', Guilford co.

We subjoin a list of the Appointments in the North-Carolina Conference:—

Raleigh District.—H. G. Leigh, P. E.

Raleigh City, Edward Wadsworth.

Raleigh Circuit, John E. Edwards, B. T. Blake, Sup.

Tar River, W. E. Pell, T. B. Brame, Sup.

Granville, Henry Speck.

Hillsboro', Addison M. Lea.

Chatham, T. Garrard.

Haw River, Wm. Carter.

Pittsboro', T. S. Campbell.

Newbern District, James Jamieson, P. E.

Newbern, G. W. Langhorn.

Snow Hill, D. Culbreth.

Duplin, J. M. Boatright.

Samson, J. T. Sinclair.

Topsail Inlet, W. S. Colson.

Trent, R. C. Maynard.

Newport, John B. Corn.

Straits, W. McMasters.

Beaufort, J. E. Joiner.

Roanoke District, Robert J. Carson, P. E.

Roanoke, Wm. Compton.

Pitt, Chapel Featherston.

Neuse, W. Wash.

Washington Circuit, R. P. Bibb.

Mattamuskeet, W. W. Kone.

Portsmouth & Ocracoke, W. M. Jordan.

Washington Station, Joseph H. Davis.

Plymouth, Samuel Pearce.

Tarboro', Alfred Norman.

Danville District, Moses Brock, P. E.

Danville and Milton, Jehu Hank.

Pittsylvania, J. A. Miller.

Banister, Joseph Goodman.

I suppose; would'nt ye?" "Yes, but you will not want to read all the time; are you acquainted with figures?" "It's a pity if I ain't, when I've cyphered clean through adoption." "Adoption! what rule is that?" "Why, it is the double rule of two; you know that twice two is four; and according to adoption, twice four is two." "You may take your seat sir," said the master. "You may take yourn too" said the pupil; "for it's a poor rule that won't work both ways"

On Wednesday of February Court, at Rockford, in Surry county, a meeting of the citizens of the county, convened in the Court House, for the purpose of a Rail Road meeting.

On motion of N. Boyden, Esq., W. P. Dobson was called to the chair, and F. K. Armstrong, and W. D. Somers, were appointed Secretaries.

The Chairman made a very pertinent address in exclamation of the cause of the meeting. He was followed by N. Boyden, Esq., who spoke for some time in commendation of the liberal policy of the Legislature and of the vast utility of the work.

Doct. Henderson followed in a short but very appropriate speech. Hamilton C. Jones, Esq, the Delegate from Salisbury, concluded with a few remarks in explanation of the object of the Salisbury meeting after which the following resolutions were unanimously adopted.

By Dr. Henderson,
Resolved, That it is the sense of this meeting that the final action of the General Assembly at its last session, on the important subject of Internal Improvements and the application of the State's share of the surplus revenue, was judicious and patriotic, and deserves the grateful acknowledgements of the people.

Resolved That a liberal, energetic and united exertion of the State: will in the opinion of this meeting, ensure to them the important results of a successful system of Internal Improvements, and gradually elevate North Carolina to the distinguished rank which she must take, and may justly claim from her vast resources.

By J. Cowles, Esq
Resolved, As the opinion of this meeting that the proposed Rail Road shall strike the River above Abbott's Creek, by the most practicable and direct route.

Resolved. That these proceedings be published.

On motion of J. Cowles, Esq this meeting adjourned sine die.
Wm. P. DOBSON, Chm
F. K. ARMSTRONG, } Sec's
Wm. D. SOMERS, }

War.—Prince EUGENE, who was one of the very ablest among the renowned generals of his day, and who has gained honor in many a well-fought field of battle, made the following remarks in relation to war:

"The thirst for renown sometimes insinuates itself into our councils under the hypocritical garb of national honor. It dwells on imaginary insults, it suggests harsh and abusive language, and people go on from one thing to another till they put an end to the lives of half a million of men. The call for war proceeds generally from those who have no active share in its toils, as ministers, women, and the lounging politicians of a large town.

A curious inquirer, desiring to know how he looked when asleep, sat with closed eyes before a mirror.

Scene in a School Room.—"What studies do you intend to pursue," said an erudite pedagogue one day as Johnny Raw entered his school room: "Why I shall study read,