

SOUTHERN CITIZEN.

BY BENJAMIN SWAIM.

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

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Legal Department.

ISSUANCE OF THE LAW REPORTS BY HAN. ASHBOROUGH, N. C.

Saturday, March 25 1837.

QUESTION BY A SUBSCRIBER.

"A man dies without a Will; and the Court appoints men to lay off a year's provision for the widow. They allow her a milch cow. The estate is insolvent. Can she hold the cow after the year is out, and some of the debts not paid?"

Answer.—She can hold the cow, and all other property that was allowed her, in defiance of creditors; provided however, her allowance has been confirmed by the Court, according to law.

Where the widow of an intestate is allowed more than she ought to have, it is the duty of the administrator to object to the report of the commissioners, and have it set aside in order to have other commissioners appointed to make the proper allowance. If the administrator fails to do this, it is a breach of his duty, and he is liable to creditors, or to the next of kin, if there be no creditors.

According to a late act of Assembly, a widow may petition for her years allowance even before an administration is granted on the estate. And where this is done, the creditors or next of kin have the same right of objection to the report of the commissioners, that the administrator has as mentioned above.

But we are further of opinion, that the widow, in the case above stated, has an undoubted right to the property on another ground, unless the estate was very small indeed. The property that the law allows a widow, for her year's support, is not barely hers for a year, or for life; but is absolutely vested in her for ever. The only question that can possibly arise, before the consideration of the report, is, whether such property is necessary to her support, according to her degree and standing in life, and lastly, whether such allowance comports with the circumstances of the estate. These are questions to be judged of, in the first place, by the commissioners, and afterwards by the Court, on a motion to confirm or set aside their report. And we think clearly that, according to the act of Assembly, a widow is entitled to a milch cow in all cases where there is one on hand, and not actually under execution, and the debts of the estate be what they may.

The following case from a Haywood case, will further illustrate this subject.

Van Norden vs Primm. Bill in Equity and Demurrer. By the Court.—TAYLOR, Judge.

The act of 1796, ch. 29, directs that the county court on the petition of the widow, may appoint a Justice and three freeholders to allot and lay off to the widow, for the use of herself and children, a year's maintenance out of the stock, crop and provisions of the deceased.—The bill states that they allotted her £ 125 in money because the perishable estate had been sold, and now it is objected that the £. 125 paid by the administrator pursuant to this proceeding should not be allowed him against a creditor, because it is not stated to be an allowance out of the crop, stock and provisions. It may be an allowance out of the perishable estate, and at the same time not out of the stock, crop and provisions, as suppose the deceased left neither the effects of other descriptions which in their nature are perishable. In support of the bill it is said, first, that this is a proceeding by a court of competent jurisdiction, and that the money having been paid in obedience to their sentence, the administrator ought to be protected. The county court have decided that all perishable articles constitute a part of this stock, and if they have judged erroneously the administrator ought not to be injured. Secondly, that the word stock embraces other articles beside cattle, hogs, and sheep, and indeed all articles which our law denominates perishable; otherwise it might happen that the widow of a merchant, mechanic, lawyer, or the like, dying in a town would have no maintenance for herself and children, when at the same time, the widow of a farmer not leaving as large an estate would be provided for; and this could not be the meaning of the legislature. I am of opinion the county court have no power to allot a maintenance out of any other part of the estate than the stock, crop and provisions, and that the stock here meant is that which is commonly denominated stock in the country; namely, animals with which the plantations of farmers are usually supplied: this construction is liable to the objection made to it, but it is not for us to legislate.—The Assembly must interfere and give a greater extent to the act before I can persuade myself to make the construction asked for. The consequence of this opinion is, that the county court acted without power in directing an allowance out of the perishable estate only, and the complainant should have appealed. I am further of opinion from the authorities cited, that the court before, and instead of pronouncing a judgment on the demurrer, may give leave to the party complainant to amend his bill, and to state that matter without which the demurrer would be allowed. The complainant therefore may amend his bill, and I will suspend judgment upon the demurrer till after the amendment.

Haywood for the complainant.

FAREWELL ADDRESS

OF

ANDREW JACKSON

TO

THE PEOPLE OF THE U. STATES.

Fellow Citizens:—

Being about to retire finally from public life I beg leave to offer you my grateful thanks for the many proofs of kindness and confidence which I have received at your hands. It has been my fortune, in

the discharge of public duties, civil and military, frequently to have found myself in difficult and trying situations, where prompt decision & energetic action were necessary, and where the interest of the country required that high responsibilities should be fearlessly encountered: and it is with the deepest emotions of gratitude that I acknowledge the continued and unbroken confidence with which you have sustained me in every trial. My public life has been a long one, and I cannot hope that it has, at all times been free from errors. But I have the consolation of knowing that, if mistakes have been committed, they have not seriously injured the country I so anxiously endeavored to serve; and at the moment when I surrender my last public trust, I leave this great people prosperous and happy; in the full enjoyment of liberty and peace; & honored and respected by every nation of the world.

If my humble efforts have in any degree, contributed to preserve to you these blessings, I have been more than rewarded by the honors you have heaped upon me; and above all, by the generous confidence with which you have supported me in every peril, and with which you have continued to animate and cheer my path to the closing hour of my political life.—The time has now come, when advanced age and a broken frame warn me to retire from public concerns; but the recollection of the many favors you have bestowed upon me is engraven upon my heart and I have felt that I could not part from your service without making this public acknowledgement of the gratitude I owe you. And if I use the occasion to offer to you the counsels of age and experience, you will I trust receive them with the same judicious kindness which you have so often extended to me; and will at least, see in them an earnest desire to perpetuate, in this favored land, the blessings of liberty and equal laws.

We have now lived almost fifty years under the constitution framed by the sages and patriots of the Revolution. The conflicts in which the nations of Europe were engaged during a great part of this period; the spirit in which they waged war against each other; and our intimate commercial connections with every part of the civilized world, rendered it a time of much difficulty for the Government of the United States. We have had our seasons of peace and of war, with all the evils which precede or follow a state of hostility with powerful nations. We encountered these trials with our constitution yet in its infancy, and under the disadvantages which a new and untried Government must always feel when it is called upon to put forth its whole strength, without the lights of experience to guide it, or the weight of precedents to justify its measures. But we have passed triumphantly through all these difficulties. Our Constitution is no longer a doubtful experiment; and at the end of nearly half a century, we find that it has preserved unimpaired the liberties of the people, secured the rights of property, and that our country has improved and is flourishing beyond any former example in the history of nations.

In our domestic concerns there is every thing to encourage us; and if you are true to yourselves, nothing can impede your march to the highest point of national prosperi-

ty. The States which had so long been retarded in their improvement, by the Indian tribes residing in the midst of them, are at length relieved from the evil; and this unhappy race—the original dwellers in our land—are now placed in a situation where we may well hope that they will share in the blessings of civilization, and be saved from that degradation and destruction to which they were rapidly hastening while they remained in the States; and while the safety and the comfort of our own citizens have been greatly promoted by their removal, the philanthropist will rejoice that the remnant of that ill fated race has been at length placed beyond the reach of injury or oppression, and that the paternal care of the General Government will hereafter watch over them and protect them.

If we turn to our relations with foreign powers, we find our condition equally gratifying. Actuated by the sincere desire to do justice to every nation, and to preserve the blessings of peace, our intercourse with them has been conducted on the part of this Government in the spirit of frankness, and I take pleasure in saying, that it has generally been met in a corresponding temper. Difficulties of old standing have been surmounted by friendly discussion, and the mutual desire to be just; and the claims of our citizens; which had been long withheld, have at length been acknowledged and adjusted, and satisfactory arrangements made for their final payment; and with a limited and I trust, temporary exception, our relations with every foreign power are now of the most friendly character—our commerce continually expanding, and our flag respected in every quarter of the world.

These cheering and grateful prospects, and these multiplied favors we owe, under providence, to the adoption of the federal constitution. It is no longer a question whether this great country can remain happily united, and flourishing under our present form of government. Experience, the unerring test of all human undertakings of those who formed it; and has proved, that in the union of these States there is a sure foundation for the brightest hopes of freedom, and for the happiness of the people. At every hazard, and by every sacrifice this union must be preserved.

The necessity of watching with jealous anxiety for the preservation of the Union, was earnestly pressed upon his fellow citizens by the father of his country, in his farewell address. He has there told us, that "while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who in any quarter, may endeavor to weaken its bonds;" and he has cautioned us, in the strongest terms, against the formation of parties, on geographical discriminations, as one of the means which might disturb our union, and to which designing men would be likely to resort.

The lessons contained in this invaluable legacy of Washington to his countrymen should be cherished in the heart of every citizen to the latest generation; and perhaps at no period of time could they be more usefully remembered than at the present moment. For when we look upon the scenes that are passing around us, and dwell upon the pages of his parting address, his paternal counsels would seem to

be not merely the offspring of wisdom and foresight, but the voice of prophecy foretelling events and warning us of the evil to come. Forty years have passed since this imperishable document was given to his countrymen. The federal constitution was then regarded by him as an experiment, and he so speaks of it in his address; but an experiment upon the success of which the best hopes of his country depended, and we all know that he was prepared to lay down his life, if necessary, to secure to it a full and fair trial. The trial has been made. It has succeeded beyond the proudest hopes of those who framed it. Every quarter of this widely extended nation has felt its blessings, and shared in its general prosperity and splendid success, the dangers of which he warned us are becoming every day more evident, and the signs of evil are sufficiently apparent to awaken the deepest anxiety in the bosom of the patriot. We behold systematic efforts publicly made to sow the seeds of discord between different parts of the United States, and to place party divisions directly upon geographical distinctions, to excite the south against the north, and the north against the south and to force into the controversy the most delicate and exciting topics;—topics upon which it is impossible that a large portion of the Union can ever speak without strong emotion. Appeals too, are constantly made to sectional interests, in order to influence the election of the Chief Magistrate, as if it were desired that he should favor a particular quarter of the country, instead of fulfilling the duties of his station with impartial justice to all; and the possible dissolution of the Union has at length become an ordinary and familiar subject of discussion. Has the warning voice of Washington been forgotten? or have designs already been formed to sever the Union?—Let it not be supposed that I impute to all of those who have taken an active part in these unwise and unprofitable discussions, a want of patriotism or of public virtue. The honorable feeling of State pride, and local attachments, find a place in the most enlightened and pure. But while such men are conscious of their own integrity and honesty of purpose, they ought never to forget that the citizens of other States are their political brethren; and that however mistaken they may be in their views, the great body of them are equally honest and upright with themselves. Mutual suspicions and reproaches may in time create mutual hostilities, and artful and designing men will always be found, who are ready to foment these fatal divisions, and to inflame the natural jealousies of different sections of the country.

The history of the world is full of such examples, and especially the history of republics.

What have you to gain by division and dissension? Delude not yourselves with the belief that a breach once made may be afterwards repaired. If the Union is once severed, the line of separation will grow wider and wider, and the controversies which are now debated and settled in the halls of legislation will then be tried in fields of battle, and determined by the sword. Neither should you deceive yourselves with the hope, that the first line of separation would be the permanent one, and that nothing but harmony and concord would be found in the new associations formed upon the dissolu-

A Smart Man
The following case from a Haywood case, will further illustrate this subject.