

# 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,**  
By B. Swain  
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## Legal Department

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ASHBOROUGH, N. C.

Saturday, June 17, 1837.

## APPEAL—STAY OF EXECUTION.

Mr. Editor:

Suppose A takes a judgment against me before a Justice, and I, being unprovided with security, pray ten days to Stay Execution—in the mean time, I become fully convinced (by taking counsel or otherwise) that I have a good defence, and go to the Magistrate to take an appeal in stead of Staying Execution, according to my prayer, as entered on the back of the warrant,—am I entitled to an appeal under these circumstances? If not, have I any remedy? and if any, what?

**ANSWER.** Strictly speaking, you are not entitled to an appeal, as matter of right, after signifying that you only intend to Stay Execution. And so on the other hand, if you, when Judgment is entered, pray the indulgence of ten days to appeal, you are not strictly entitled to the Stay of Execution. We think very clearly, that the words of the Act (1812) rationally construed, require the party to make his election as soon as judgment is entered; so that the opposite party may certainly know what course he will pursue. Yet notwithstanding we have expressed this to be the strict law of the country, we see no objection to the exercise of a sound discretion in the Magistrate. And where the applicant for an appeal or Stay of Execution, has not been actuated by motives of obstinacy or prevarication, he ought to be permitted to choose his course to pursue, any time within the 10 days, especially if the ends of justice are likely to be advanced by it.

As to the other branch of the enquiry—What is the remedy, if any, after the right of appeal is lost,—there is but one eligible course, and that is an application for a writ called a *Recordari*. We mean, where the right to a new trial before a Justice, is also lost. Whether you are entitled to a new trial or not—you may see on reference to the "Man of Business," vol. 2, page 364—78.

To apply for a *Recordari*, you must first draw yourself (or procure to be drawn by counsel) a Petition to some Judge of the Superior or Supreme Court, setting forth a true history of the whole case, accompanied with an affidavit of the truth of the facts stated. This affidavit you must swear to before the Clerk of the Court, or some Justice of the Peace, unless however you go in person to the Judge—then you may swear to the affidavit before him. If the Judge should be of opinion that the case set forth is one that calls for the exercise of his extraordinary jurisdiction, he orders the Clerk of the Superior Court to issue a writ of *Recordari*, commanding the Magistrate to return into the Superior Court a complete Record of the case. And here, the first

question to be decided is, whether, after hearing all the affidavits produced on both sides, the Court will sustain the *Recordari*—in other words, whether it will retain the suit on the docket and let it stand for trial on its merits. If the decision be in favor of the applicant, the merits of the whole case are open for investigation, as though it had never been tried any where.

But you need never apply for a *Recordari* unless you are sure you have the merits of the case in your favor; and have not been guilty of any negligence.

From the Washington (N. C.) Whig.

¶ We have been requested to insert the following result of a case brought before a Magistrate. We assent on the ground of justice, alone. The law must either be manifestly imperfect, or the decision erroneous; and the case in point may be considered a matter of no ordinary interest to the public: there can be no impropriety therefore, we think, in publishing the opinion of the Magistrate who presided—particularly as the report contains no personality.—If the Magistrate should deem himself to have been misrepresented by the reporter, our columns will be freely opened to his defence.

Reported for the Whig.

**IMPORTANT DECISION.**—Magistrate's Court.—We give the whole of the facts, as we think the community are not aware of the precise nature of the laws relative to the offence of enticing a slave from his or her master's service, and harboring them after they have run away. The opinion of the magistrate who presided, though brief, we think will shed new light upon the subject, and will doubtless suggest to our legislature the necessity of so amending our laws as to make them reach cases parallel with the present. We confess that we were of opinion that our laws were fully adequate to the present emergency; but the decision of one so familiar with the statutes of our country as the presiding Justice, must settle the point.

This was the trial of a state warrant wherein certain slaves and a free woman of colour (no less respectable a person than the midwife of the town) were charged with enticing away from her master's service, and harboring while away, a girl slave, named Peggy. She had been found in the house of Charles, one of the accused, under lock, and carried home, and three days afterwards again run away. The persons charged with the offence were brought up to be punished, if guilty, to prevent a recurrence of such offence in future. Charles had already received his reward from the hands of his master. A nol pros was entered against him and two others, and they summoned as witnesses. The charges stood against Jeff, Martin, and Beeky.

It was proved on trial that Jeff brought this girl to Charles, and prevailed on him to conceal her; that he told him where her trunk was concealed, (which was at Beeky's) and that Jeff visited her in her place of concealment; another witness proved that Jeff sent him to Beeky's for her trunk. It was proved he bought her shoes. It was also proved he was intimate with her, and with her the night she left the service of her owner. The prosecutor was about to prove that he attempted to procure her a passage to New York, but it was overruled upon the ground that she was then the property of another. The truth of the evidence was not questioned; yet midwife and all had a happy deliverance.

It was decided by the Justice that the accused were not guilty of the charges. As well as we could glean from his remarks it was so decided upon the literal construction of the Act of Assembly made to prevent the enticing away and harboring runaway slaves. The offence consists alone in the act of enticing a way or harboring; and however plainly convicted of aiding and abetting, yet if not caught in delicto, he could not be punished *de jure*.

Character is like wealth. It takes many years to acquire it, but the actions of an hour may lose it.

From the Genesee Farmer.

## RECEIPT & PATENT VENDING.

There is a pretty extensive class of men among us, men too lazy to work, and having the fear of the state prison too vividly before their eyes to steal or counterfeit, yet who adopt measures to gain a living, in our opinion, less honorable, and infinitely more mischievous. One of these ways of obtaining money, and which among the Yankees is called getting a living by hook or by crook, is by procuring a patent for something new, or which may be deemed so—a churn, a gimblet, or a grist-mill perhaps—and then travelling in all directions to vend rights, privilege of use, &c. Another secures an antiquated receipt ostensibly producing the most valuable and astonishing results, and forthwith commences a magnificent system of plunder upon the pockets of the gullible many. The truth is, we must feel a pleasure in being cheated—not in the remembrance of it—or we should not suffer these wandering vagabonds to touch our cash so often. A smooth-spoken rosy-gilled man enters your house, and unfolding his ample pocket-book, lays before you a plan of some machine or implement calculated to facilitate labor, and add materially to the profits of the farmer or mechanic—a churn that will make butter out of skimmed milk—a plough or harrow to go without a team—a pump to draw water from a dry well, with a multitude of other things, represented by a variety of black scrawls on paper, are tendered for your inspection. Should he discover that your way lies not among such articles—and it's a thousand chances to one if our man does not make you believe some one of them is exactly adapted to your farm and circumstances—he turns over a leaf and presents you with receipts to preserve apples the year round, (perhaps by impregnating them with some of the oxides of lead)—for boiling potatoes without allowing their skins to crack; or should you be afflicted in body or in mind, for a trifle he will invest you with the power of creating a salve that will cure the rheumatism or the gout in a twinkling—waters that will give instantaneous sight to the blind—and tinctures that will make your conscience or your character white as a sheep's liver, ere you can say "Jack Robinson!"

To be serious, our farmers and our citizens generally, are too much the prey of such designing, speculating men. The utility or inutility of implements, machines, or medicines, should be made manifest at the expense of the inventor, and not at the expense of the public. If an implement, or machine, on proper trial, proves really valuable, there can be no difficulty in obtaining the written testimonials of the fact, from men well known to the public—men who could not be easily deceived, and who would not lend their names to deception, or certify to facts which they had not seen fully sustained. Tens, if not hundreds of thousands of dollars are in this way annually taken from the hard-working and industrious for patents, and things in themselves utterly worthless, and of which fact the vendors themselves must have been perfectly satisfied. On this point we say plainly to our farming friends, beware how, what, and of whom you purchase patents or receipts; ascertain if the principle of the invention offered be practicable in execution, and if so, whether it is one adapted to your wants. Remember, that because a thing is good, it is not absolutely necessary you should possess it; and if you do not actually need it, by procuring it you are suffering an unqualified loss.

We have one other remark to make on the subject of patents, and that is such is the operation of the system, that where an implement or machine is decidedly beneficial, there is in ordinary circumstances no safety for the farmer in their purchase or use. Take for instance the revolving or patent horse-rake, one of the most valuable implements for facilitating labor that science or art has put into the hands of the agriculturist. They are made in various districts, counties, or towns, in which the right of making and using them has been properly secured. Perhaps the supply manufactured is greater than the demand in the privileged district, and then they are distributed in the neighboring towns for sale. Farmers unacquainted with the technicalities of the patent law, purchase, pay the full value of the rake, and

are satisfied with its operation. By and by, along comes the patented, or the owner of the right for the district or town, and demands of the agriculturist, a sum in general equal to the first cost of the implement, or threatens him with a prosecution. On inquiry the farmer finds that no right has been taken out for the town or county in which he resides; he finds too that the law gives the patentee or the owner of the right, the privilege of proceeding against either the maker, the vender, or the user of the rake, and as the latter person is generally the most responsible of the three, he finds he must again pay for the rake, or, which is worse, experience the vexation and expense of a protracted lawsuit, the greatest evil that can befall the farmer. We are convinced that the discoverer of a useful invention should be amply protected in the enjoyment of the fruits of his genius and study; and as perhaps the law of patents cannot be so amended as to meet every supposable case, hard as its operations on the farmer may sometimes be, he must cheerfully submit. Hence we say to the agriculturist, buy no patent horse rakes, excellent as they unquestionably are, unless you first ascertain that you can use them without being compelled at some future day to pay double their value. For ordinary farmers, the single horse rake will answer every purpose; it is more simple in its construction, less liable to be broken or deranged, and may be used without fear of patents, prosecutions, or conflicting claims.

From the Boston Atlas.

## WHIG AND TORY—THE SPECIE CIRCULAR.

"The Tories," said Mr. Jefferson, "are for strengthening the General and Executive Government; the Whigs cherish the representative branch and the rights reserved by the States as the bulwark against consolidation, which must ultimately generate monarchy." What could better define the relations of the two great parties which now divide this country? The Whigs look to Congress. The Executive defies Congress, assuming legislative powers, vetoing the acts of Congress; and refusing to pass bills that have received the sanction of nine-tenths of the popular branch, and of an almost unanimous Senate. And in this abuse of power the Tories of our day sustain the Executive!

Whatever may be the effect of the specie circular, or of its repeal, there can be no question of one thing—that Mr. Van Buren should not assume the responsibility of thwarting the will of the people as expressed with such decisive emphasis through their constitutional organs. The absorption of legislative powers by the Executive, as is truly said by Mr. Jefferson in the passages we have quoted above, must ultimately generate monarchy. The whole course of Executive legislation on the currency has been an obvious and unjustifiable assumption of powers plainly delegated to another branch of the Government. It is mentioned by the writers of the Federalist, with all their alleged disposition to aggrandize the Executive, that one of the main distinctions between our President and other sovereigns is in the fact that the President has no control over the currency. And yet Mr. Jackson has taken the currency into his especial keeping, and has told the people that he would give them a better currency, and that he would carry them through a succession of experiments that would result in expelling gold and silver, and substituting gold and silver. To consummate this grand result, he has kept our commercial and pecuniary affairs in a state of confusion and embarrassment for the last four years, till the series of experiments have determined in a general explosion throughout the country. The importing merchants are beggared—the manufacturers are stopping their work—the laboring classes are thrown out of employment, and the people are flooded with a spurious currency of country bills which levy a daily tax to an immense amount on the working and industrious classes.

And the whole responsibility of this rests upon Andrew Jackson, whose policy Martin Van Buren is pledged to follow. It is a responsibility which these gentlemen have assumed, not a responsibility that the laws imposed, or that circumstances forced upon them. The hero of New Orleans is the Alpha and

Omega—the beginning, and, we verily believe, the end of the whole system.—Congress chartered a bank—Congress refused to remove the deposits—Congress refused to authorize the issue of a specie circular—and Congress, by an overwhelming majority in both branches, commanded its repeal. And now shall the Whig or the Tory principle ultimately prevail? Shall the representative branch or the Executive ultimately triumph? Shall the people carry into effect their expressed will, or shall the President, with Amos Kendall & Thomas H. Benton, set up their cabinet edict against the constitutional authority of the Legislature? The decision of this question will settle the ascendancy of Whig or Tory in this sometime Republic.

## THE TABLES TURNED.

At the Donegal Assizes the following humorous cross-examination of a witness occasioned much merriment in court:

Mr. Doherty.—What business do you follow?

I am a school master.

Did you turn off your scholars, or did they turn you off?

I do not wish to answer irrelevant questions. [Laughter.]

Are you a great favorite with your pupils?

Ay truth, am I a much greater than you are with the Public.

Where were you, sir, this night.

This night, said the witness—there is a learned man—this night is not come yet. I suppose you mean that night, (here the witness looked at the judge, and winked his eyes as if in triumph.)

I presume the "schoolmaster was a-broad" that night doing nothing?

Define "nothing," said the witness.

Mr. Doherty did not comply. Well, said the learned schoolmaster, I will define it—it is a footless stocking without a leg. (Roars of laughter, in which his lordship joined.)

You may go down, sir.

Faith, I believe you're tired enough of me; but it is my profession to enlighten the Public, and if you have any more questions to ask I will answer them.

The Woman who went abroad.

—A lady who was in the habit of spending most of her time in the society of her neighbors, happened one day to be taken suddenly ill, and sent her husband in great haste for a physician. The husband ran a few rods, but soon returned, exclaiming,—“My dear, where shall I find you when I get back?”

Cure for a disorder in the Mouth called scald.—Take of "good nature" an ounce; of an herb called "steady employment" one ounce. Mix these with a little "charity" and two or three sprigs of "prudence." Simmer them together in a vessel called "circumspostion" for a short time, and it will be ready for daily use.

Vagueness of Color.—A native of the land of potatoes and bog, asked a neighbor if he had ever seen a red black berry? "To be sure I have," said Pat, "all black-berries are red when they are green."

He knows nothing of men who expects to convince a determined party man. And he nothing of the world, who despairs of the final impartiality of the public.

DISCONTENTMENT.

How universal it is. We never yet knew the man who would say "I am contented." Go where you will, among the rich and poor, the man of competence or the man who earns his bread by the daily sweat of his brow, you hear the sound of murmuring and the voice of complaint. The other day I stood by a cooper, who was repairing a merry tone with his saw, near the cask "ah, mine is a hard one