

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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TERMS.

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Legal Department

INSURANCE OF THE LAW EXECUTE SO MAN.

ASHBOROUGH, N. C.

Saturday, June 24, 1837.

EXECUTOR DE SON TORT.

Question by a Subscriber.

"How far am I at liberty to interfere with the estate of a deceased person, without subjecting myself to the payment of Debts as an Executor *de son tort*; which I understand to mean;—an Executor of his own wrong? Please lay down some general line of distinction, that may be intelligible to an ordinary reader."

ANSWER.

Various are the acts which constitute an executor of this description, such as his taking possession of and converting the assets to his own use; paying the deceased's mortgages, or other debts or legacies out of them; suing for, receiving, or releasing the debts due to the estate; seizing a specific legacy without the assent of the lawful executor; entering on a lease or term for years, especially, if he enter in right of the deceased, and does acts on the land, which belong to the office of an executor, as turning the cattle upon it; delivering to the widow more apparel than is suited to her rank, answering in the character of an executor to any action brought against him, or pleading any other plea than *ne unques executor*. (That he is not an Executor.) And all other acts of a similar nature, however slight, may have the same consequence, as in one case, merely taking a bible, and in another a bedstead, were held sufficient, inasmuch as they are the *indicia* of the person so interfering being the representative of the deceased.

So where a creditor took an absolute bill of sale of the goods of the debtor, but agreed to leave them in his possession for a limited time, before the expiration of which the debtor died, and the creditor took and sold the goods; he was held liable to the extent of their value as executor *de son tort*, for the debts of the deceased.

But there are many acts which a stranger may perform without incurring the hazard of being involved in such an executorship; for such as locking up the goods; directing the funeral, in a manner suitable to the estate which is left, and defraying the expenses of such funeral himself, or out of the deceased's effects; making an inventory of his property; advancing money to pay his debts or legacies; feeding his cattle; repairing his houses; providing necessaries for his children; for these are offices merely of kindness and charity.

Nor can there, generally speaking, be such an executor, when there is a rightful executor, or where administration has been duly granted; for, if after probate of the will, or administration granted, a stranger take possession of the property, he may be sued as a trespass-

er by the executor or administrator; but if it is otherwise if, after taking such possession, he claims to be executor, pays or receives debts, or pays legacies, or otherwise intermeddles in that character, for in all those cases, he becomes an executor of his own wrong.—3 Bac. Abr. 20-25.—See also Martin on Executors, 15-18.

CIRCULAR.

Ashborough, June 19, 1837.
FELLOW CITIZENS OF THE COUNTY OF RANDOLPH.

You will permit me to address you this Letter, on account of the propriety of the custom, of candidates writing, and submitting Circulars to the examination of the public, of whom they are asking patronage. I have thought if it were entirely to supersede the practice of oral electioneering it would be better; as it would fix those solicitors of public favor with the principles, and views they might therein declare—and seal their lips from that duplicity and prevarication with which they are sometimes chargeable.

I might, nevertheless, feel that on this occasion the apology for me would be as ample as the pleasure would be complete, in going the Circuit of the County with your Sheriff, to renew old acquaintances, and form new ones with the numerous young men who have grown up to the exercise of the elective franchise within the six or eight years that I have passed in agricultural seclusion. But not knowing that I will be able to do this, it becomes the more necessary that I communicate with you in this way.

I suppose it is already known to many of you, through the medium of the newspaper that I am among the number that are asking at the hands of the people (who alone can have the legitimate right to confer such favors) the office of Superior Court Clerk.

The determination to ask of my fellow citizens this trust, was taken without knowing who, or whether any other person would put up similar pretensions. I therefore feel nothing of the spirit of opposition towards any of the gentlemen who have, or hereafter may become candidates for the same office, more than what must necessarily result from the relative attitude of two or more persons striving for the same place, which one only can gain and occupy.

Conscious of no unfair designs towards my brother candidates, and suspecting none towards myself, I trust that no other feelings than those growing out of honorable rivalry will be suffered to imbitter our spirits, or tarnish our conduct in the eyes of the public during the electioneering canvass.

The motives inducing me to come before you in this character are soon expressed. In the first place, it must give to the virtuous mind sensations of highest pleasure to have the management of an important, and not dishonorable public office, confided to his care by the suffrage of his fellow citizens. And there are, moreover, certain emoluments attached to the office which are rarely found to be unacceptable to him who performs official duties, or holds an office.

With regard to the duties and qualifications for this office, I may be permitted to say, that the former are so well defined, and made so plain by law, that integrity, promptness and industry will generally ensure their correct performance. It is true, however, that in every community there are citizens who know but little of legal formalities, and are at times obliged to transact business with their clerks, and are therefore often sub-

jected to fancied, and sometimes to real imposition—when proper condescension, and a disposition to oblige on the part of the officer, would obviate all the difficulty.

My letter is short, gentlemen, when compared with the length to which such documents are often spun out; but I know not whether you will think it needs an apology on that account; I cannot well make it longer without seizing on topics that would appear to an intelligent community, trifling or impertinent, or at best, subject the writer to the charge of laying hold on a remote occasion, to make a vain parade of his parts and learning.

I suppose in selecting your Clerk, you will, as prudent citizens, enquire—Has he the necessary mechanical qualifications? Is he a fleet and accurate penman? Has he sufficient knowledge of the routine of business in Courts of Record to enable him to act promptly? Is he diligent, industrious and honest? Has he those habits, or qualities of polite condescension which are necessary to ensure ready and impartial attention to all the citizens, in his official capacity?

I have now, gentlemen, placed myself, amongst others, in an attitude for scrutiny. I believe you will examine impartially, and decide correctly. If that decision should be in my favor, the obligation thus imposed on me can only be requited by the most faithful, and unremitting exertions to serve you in an acceptable manner.

I am, gentlemen, your friend,
and fellow citizen,
MOSES SWAIM.

Tragic Scene.—We witnessed the most tragical scene at Yancy Superior Court, that has ever been acted in any court in North Carolina. The facts were as follows: About two years since a man by the name of John Wilson, married Elizabeth Rey of that county. They lived together about seven weeks, when some disturbance took place which caused their separation. Six months ago the husband filed a petition for divorce, setting forth various causes—declaring that he was young and inexperienced when he married her, and was not acquainted with her true character, that her conduct during the time they lived together, was insupportable, and by him could not be endured. She answered, that they were raised in the same neighborhood, and had known each other from their infancy up; that he knew her character and circumstances in life perfectly well when he married her, and had taken her with his eyes open to all her frailties; she positively denied ever having been guilty of any misconduct, during the time they lived together, but that she acted towards him the part of an affectionate wife. She further asserted that when he was about to leave her he made no charges against her, but gave as his reason for separation, that he did not nor had he ever loved her; that his friends had induced him to marry her merely for her property, and that he had ascertained he could not enjoy life with a woman he did not love.

At the last court an issue was made up and submitted to a Jury. The petition and answer having been read, evidence was then introduced which proved decidedly in favor of the petitioner. On the part of the plaintiff the case was submitted without any argument, but the counsel for the defendant resisted the divorce by a long and feeling speech, in which he alluded to the solemnity of the marriage vow, the

mutual duties it imposed on the parties, and the want of sufficient cause in that case to dissolve the bonds of matrimony.

During this investigation the parties were both in Court. The husband was apparently young and simple, and in fact a mere boy, and there was nothing in the least prepossessing in his appearance. The wife seemed something older and altogether the superior. She is a fine looking woman, with dark hair, black eyes and very expressive face; she manifested great interest in the trial.

The Jury after retiring a few moments, returned a verdict for the plaintiff. The parties were still in their seats behind the bar, some six or eight feet distant from each other, the wife asked a gentleman by whom she was sitting for his knife as if to trim her finger nails, she felt of the edge, rose to her feet, paused a moment, turned pale, her eyes flashed fire, and she suddenly sprang forward with the drawn knife and aimed at her husband a deadly blow. But fortunately, a lady who was standing by saw her get the knife, and perceived from her countenance that she was meditating something of a desperate character, watched her until she saw the blow aimed at the throat of the unsuspecting husband, she instantly seized the arm of the infuriated wife and diverted the weapon from the object at which it was aimed; but determined on her hellish purpose, she threw the knife with great violence at her husband and turning, made a most furious attack on her whose hand had arrested the blow and thwarted the wicked design. The court ordered her into custody; she was arrested and borne out of the court, making the most wild and frantic exclamations—calling to her husband in the most tender and passionate language, and seemed to be entirely deranged.

Her conduct was strange and unaccountable, but all who witnessed the scene agree that she must have loved her husband. She had listened attentively to the investigation of the whole matter, heard the pathetic speech of her counsel, and then the verdict of the Jury pronouncing their final separation; she felt that she loved him above all others, and the idea that he was then at liberty to marry again (for that was said to be his object) was more than she could endure. Her heart was devoted to him, and sooner than see him pledged to another she would see him die, and that too by her own hand, in the presence of the court and the multitude that surrounded her. Of the consequences to herself she never thought, nor for them cared; they could not have been greater than death, and no doubt she felt at that moment that she would gladly take refuge in the arms of death. She remained in jail until the next morning, when she was brought before the court, and after being severely reprimanded, was sentenced to five days imprisonment, for contempt to the court, and required to give bond and security for her good behaviour for the next twelve months.

Extract of a Letter from a gentleman in Mississippi to his friend in the city of Washington.

"Natchez, May 10, 1837.
"I was in a tight place on Monday night, the 8th instant, on board the steamer Ben Sherrad. About ten miles above Fort Adams, on her way up, she took fire; the tiller rope burnt before the pilot could put her ashore. She had on board a full freight, and about 200 passengers in all, cabin and deck. Of the

28 ladies on board, only two are saved; and possibly there might be 50 persons in all who escaped, losing their all. I had been to New Orleans, raking and scraping, and had succeeded in getting a larger pile than was to my advantage in gold and silver, together with a little United States money. As soon as I saw that the boat would burn before she would land, I joined with others and threw over some of the cotton bales which lay convenient, and mounted one. Some joined me, but in passing the wheels they all washed off, and none succeeded in getting hold again. In passing the stern, a gentleman and his lady jumped over, endeavoring to share with me the cotton bale, and with much difficulty I succeeded in getting them hold of the end of the band ropes. A number of times, when we came in the whirls, the lady would turn; then he would beg of me to save his dear Laura for God's sake, which I did time after time, until I found myself so completely exhausted that I was obliged to drift with the bales, not having strength sufficient to get upon it. In one of those whirls, or sucks in the water, they both went off; the gentleman seemed to give up all hopes, and it was so dark that all I could do was to save myself. I asked them where they were going; he replied to Baltimore. I do not know their names. When it was light enough to discern the shore I was quite near, and it was with great difficulty that I mustered courage to leave the bale, and trust getting on shore. I tried it, and succeeded. Just as I landed and crawled up the bank, a steamboat came in sight, drifting down, picking up all who had survived the last three or four hours."

Currency.—The writer assisted five old veterans to receive their respective pensions; three each for \$20, and two each for \$26 66. Their credentials were undisputed and the order for the money was promptly issued upon the pet Girard Bank. They wished the specie change, but it was refused, and the Government pensions were to be received in Bank Notes only. Why should the Government then insist on specie payments for postage or debts due to it, when the like mode of payment is refused to those who established the independence of the country? Remarks on such transactions are unnecessary to all considerate and well-wishers of the country.
U. S. Gazette.

INQUISITIVENESS.

It is supposed that the American is the greatest art in parrying inquisitiveness, because they are more disposed to it; but a well-known civil war at the late political excitement made a defensive colloquy with a rustic inquisitive, which could hardly have been exceeded by any transatlantic performer. Travelling post, he was obliged to stop at a village to place a horse's shoe, when the Paul Pry of the place bristled up to the carriage window, and without waiting for the ceremony of introduction, exclaimed, "Good morning; sir! horse east a shoe, I see. I suppose you are going to—?" Here he paused, waiting the name of the place to be served, but the citizen answered, "You are not a sir! I generally go there at this season." "I—hum—do ye, and no doubt you come from—?" "Right again, sir, I live there!" "Oh, ay, do ye—but I see it is a London shay. Pray, sir, be there any thing stirring there?" "Yes, plenty of other chaises!" "Ay, ay, of course; but what do folks say?" "Their prayers, every Sunday!" "That's not what I mean; I wish to know if there is any thing new and fresh?" "Yes, bread and herrings!" "Anan, you be a queer chry. Pray mister, I ask your name?" "Pools and clowns call me muster; but I am in reality, one of the boys of Aristophanes, and my genuine name is Brekekes Knox, Drive on post 34!"
English Paper.

A copper coin (a cent) was recently dug up in a garden in this place which bears a curious relation to a part of our American history. It has on one side a head of George III. and the words "Georgius III Rex" around the edge. On the opposite side are represented the coats of arms of England, Scotland, Ireland, and Virginia quartered; and