

SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

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

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[OF 55 AFTER 3 MONTHS.]

SOUTHERN CITIZEN,
By Benjamin Swain
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Legal Department

ISSUES OF THE LAW REQUESTED BY MAIL.

ASHBOROUGH, N. C.

Saturday, July 29, 1837.

ENTRIES OF LAND GRANTS

&c.

Question by a Subscriber.

"When a man builds on land belonging to the State, and never enters it; but gets a grant for it,—will that prevent any other person from entering and holding it? We want you to give us the law on the subject of vacant land, in your next paper."

ANSWER.

1. In a court of law, a grant is conclusive evidence of title Reynolds vs. Flinn, 1 Hayw. 107—Sears vs. Parks ib. 135—Dickey vs. Houdepile, ib. 358.

2. The first grant gives the best title; and a court of law will not, on the trial of an Ejectment, go farther back, to look into the means by which the grant was obtained. Wright and others vs. Bogan, 1 Hayw. 177.

3. Where two grants are of the same date, the court will look to the number, or any other circumstance appearing from the face of the grant, to see which was first issued. Andrews vs. Mulford, 1 Hayw. 319.

4. Length of possession alone, under marked and visible boundaries, may be construed by a jury into evidence of a grant having once issued. But on this point, no precise time is fixed by law. Dudley vs. Strange, 2 Hayw. 13—Sullivan vs. Alston, ib. 128.

5. If a grant has issued for land, that has been forbidden by law to be granted, a court of law will take notice of the error, and declare it void.—Strother vs. Cartley, 1 Murph. 162.

6. Where a grant has issued erroneously, or fraudulently, the person aggrieved thereby, has but one course to pursue, and that is an equitable proceeding under the act of 1798. He must petition the Superior Court of the County, where the land lies; setting forth particularly the circumstances of his complaint, accompanied with a certified copy of the grant; and pray that a *scire facias* issue to the grantee to show cause why the grant should not be adjudged void. And by act of 1830, the State may, in like cases, proceed against an individual in the same way. But the Petition in behalf of the State, (and other procedure) has to be by the attorney general, and prosecuted in the Supreme Court.

7. 21 years possession of land under color of title, bars the right of the State, provided the possession has been under known and visible boundaries. Act of 1791. But this does not effect, in any way, the common law principle, as to the presumption of a grant from long continued possession, as mentioned above. Fitz-Randolph vs. MaNorn & others; Term Rep. 127.

8. The case of Terrel and Alexander vs. Logan, from Rutherford, was as follows:

Petition to vacate a grant.—The Petitioners entered the land on the 5th June 1817 and obtained a grant on the 18th of November 1818. It appeared that one David Miller, under false pretence of an entry, had obtained a grant many years before for the same land; and had conveyed to Logan, the present defendant; that Logan had purchased without notice of any defect in Miller's title, and had had possession for more than 21 years previous to the filing of the petition.

HALL, Judge, delivers the opinion of the Supreme Court as follows:

"Miller is not a party to the proceeding now before the Court, and no decree, for that reason, can be made against him. We cannot, therefore, undertake to vacate the grant complained of, which the state made to him.

The act of 1798, which gives this court jurisdiction in regard to grants, does not give it jurisdiction with regard to mesne conveyances from one man to another. Therefore we have no power to disturb the conveyances made to Logan, and to those under whom he claims. Whatever title he may have by possession, under colour of those mesne conveyances, we must leave him in the undisturbed possession of. I agree in opinion with the judge in the Superior Court, that the petition must be dismissed with costs.

The other Judges concurred.

Ashborough, July 20th, 1837.

FELLOW CITIZENS.

Notwithstanding the statement in my other letter, to the effect that I thought it highly probable, that existing circumstances would forbid the idea of acquiring any acquaintance with you, by personal visits throughout the county; I find that it is a matter of surprise to some; of regret to others; and no doubt, of gratification to a few, that I did not take the circuit with our Sheriff, and my brother candidates, in order to attend the several Militia parades, and tax gatherings.

In order more fully to satisfy the minds of such as may be wavering on that point, I have come to the conclusion to address you once more, stating more fully my reasons for the singular course I have taken with regard to electioneering, together with a brief exposition of my views on the subject.

It will of course be recollected by those that have attentively perused my other letter, that I gave in that some reasons why I did not expect to make any excursions through the county for electioneering purposes; but lest some of my readers should not have had the opportunity of reading that letter, I will re-state them in this—they are these.—

1st. Being a man in limited circumstances, with an extensive family, who are dependent in a great measure on my labor for their support, I have consequently no leisure, more than what is absolutely necessary for recreation, and the improvement of my mind. And in addition, to these considerations, might possibly after paying my bill at some time, to my mortification, exhibit an empty purse, without the means to replenish, which I must think would place a candidate in quite an awkward situation. In reply to this it might probably be said, that should I prove successful, I would be amply compensated for all my trouble and expense. To such I would say, that as a prudent man I would wish to take into view both sides of the question, and put, not only the pleasing and perhaps visionary prospects into the balance; but, in the other end to place the uncertainty of success, with its attendant train of circumstances, and with an impartial view endeavor to ascertain which end would seem to preponderate. And even admitting I should ultimately prove successful, I very much doubt, whether the profits arising from the office are more than sufficiently ample to justify the holder in the honorable discharge of his duty,

without making any calculation on a remaining balance to re-emburse those previous expenses, unavoidably incurred, together with a reasonable compensation for the loss of time to himself, and to the community, usually spent in this hypocritical course of political gambling. Hush!—Gentle reader, be not alarmed, but pardon me if, perchance, in my zeal and illiterate or unlearned condition, I should accidentally drop out an inappropriate,—let me consider—no, rather appropriate word, at the expense of some of your feelings, for you may rest assured, fellow citizens, that my motives are pure,—and my aim, your good.

Secondly. Merely for the sake of argument, I will here admit, that at a superficial glance there is this one lonely apparent advantage, in favor of the prevailing practice of electioneering: For instance, when an individual who has lived in a secluded situation, becomes a candidate for office, it gives the people an opportunity of becoming in some degree acquainted with his external or outward appearance; which at best is only superficial, and, as stated in my first letter, only calculated, like the polish often given to base metals, in order to deceive the unexperienced purchaser by its brightness; while the internal properties of the metal, like the inward, and much more essential qualifications of the man, and particularly of the hypocritical sycophant, lies concealed behind an obscure mask, until a more critical test of inherent properties is resorted to; and as exposure to the air for a time, will prove the qualities of counterfeit metals; so will an acquaintance for a length of time, display the real character and qualifications of the man. So that even in this case, I am fully persuaded that we would tread on safer ground, by a strict inquiry respecting his character and qualifications, than by an hour or two spent in his presence when soliciting for office.

How often do we witness, and too often to our sorrow, men seeking for office, whose whole soul seems as it were, to dwell on their tongue! who know their superior capacity to gull and deceive the people. Others we see, who, in the course of events have acquired a few of this world's goods; though perhaps more by the application of the credit system than by the sweat of the brow; feeling themselves exalted above their fellow worms, or honest neighbors; yet grasping at higher grades, and courting popularity by every means in their power, whether those means be, or not, in strict accordance with true genuine principles, either religious or moral. How often, I say, do we see such characters promoted to office, while the honest, true hearted citizen is neglected or treated with contempt, although probably possessed of good sound judgment and invariable integrity; and on strict examination of equal if not superior qualifications to the polished office hunter, whose sole object is, by courting popularity, to rise, if not suddenly, by a progressive ascent, until such a degree of ascendancy is acquired over the people by intrigue and hypocritical maneuvering, that he can siphon their money before their eyes, and at the same time make them believe him incapable of acting otherwise than strictly honest; though in reality actuated by entirely selfish motives, regardless of the good and happiness of the community.

Thirdly. The, (I had like to have so far forgotten myself as to have again said, gambling candidate) but if you will please to pardon my inadvertency, or absence of mind, I will try to substitute some other word in its place, and say, *Racing* candidate, in his zeal to excel in a stump speech, and perhaps laboring under some embarrassment, arising perhaps from a consciousness of his own incompetency to make a masterly display of his peculiar parts; and also from a want of justifiable matter for a copious train of remarks; in order to convince the people, whose interest he has so much at heart, of his peculiar qualifications to serve them; too often lets fall some unguarded expression, which peradventure conflicts with the interest or views of some fellow candidate, which in accordance with our nature, produces irritation, sharp retorts, and sometimes quarrels between the parties; and if the contest should not finally terminate in exertions to settle the matter by the application of fist and skull, the consequence will in all proba-

bility, be lasting hatred, and not only ill will between the parties themselves; but the contagion will, no doubt, spread through an extensive circle of their friends.

Fourthly. As it evidently must be admitted by every rational being, that a deliberate and impartial survey of the operations of nature, which we daily witness, most carry with it an irresistible conviction; that no link in the extensive chain was made exclusively for its own individual existence; but that in every instance, each link or part, is not only dependant on other parts; but is actually subservient to the wholesome existence of the whole. Here I might branch out into an extensive train of argument to prove my position; but as I think it will not be denied, it seems unnecessary in this brief letter. I shall therefore proceed, and say, that as every other particle in nature is so closely combined for the mutual benefit of the whole; that Man, the noblest work of Creation, was also designed, not only as an active being in procuring the means of his own existence; but also in a mutual point of view, in contributing to the comfort and happiness of the whole human family. And to trace the inference still further, while we see all nature both animate and inanimate, progressing and pursuing a steady course, in order to answer the end of its creation; shall not man who has far nobler views and infinitely nobler ends to accomplish, be equally diligent in order to acquit himself of his responsibility towards himself, his fellow creature, and his Creator? and not be trifling away those few precious moments of time allotted him here, in riding from place to place, and from day to day, in the too often hypocritical guise of friendship, *bowing to, shaking hands with, complimenting, brokering,* and enquiring after the welfare of individuals and their families, who at any other time would be passed unnoticed, except by way of ridicule; as the time thus spent is lost to the community, and also to the individual who ultimately proves unsuccessful in the contest.

Fifthly. It appears to me quite a rational conclusion, and I think must be admitted by all, that whenever by the abuse of any privilege or custom, however pure the motives might have been in its first introduction, it becomes productive of more bad tendencies than good ones, or in short does more harm than good; it is then fully time that all good citizens should unite their influence in order to put it down.

Sixthly. In selecting a public officer, it appears to me that the first and most essential points which present themselves for examination, are, not whether he is a rich man, a great orator, or (to use the familiar phrase,) a portly well looking man, or is he our father, brother, cousin or what not; but first is he a man possessed of the requisite qualifications to fill the office with credit to himself and satisfaction to the people? and secondly, is he a man who by his invariable integrity, his strict adherence to moral principles, his honest, upright conduct in his dealings, and a clear manifestation by the whole tenor of his conduct, of his wishes to promote not only his own interest; but the interest and happiness of all with whom he may have any intercourse, has entitled himself to entire confidence? There are still points of less importance, which ought in their turn to claim our attention; but if we wish our public offices well managed, we should never lose sight of those highly important qualifications in selecting men for that purpose.

Fellow Citizens, you now have some of my views on the subject of the popular practice of electioneering, with some of the most prominent reasons, why I could not conscientiously, take the course pursued by my fellow candidates. It is now with you to examine the matter impartially, and say whether you think my scruples are sufficiently well grounded, to justify the singular course I have taken. I would further remark that in all cases I hold myself open to conviction, and just as soon as any person will give sufficient reasons to prove that I am in an error, I am perfectly willing to make prompt acknowledgement, and retract my course; but until then, I must strictly adhere to the same course of policy which I have taken in respect to electioneering; for you may rest assured, however highly I may appreciate or value your favor; yet I would prefer to remain in a humble, secluded

situation, with a justified conscience, to being promoted on principles; or by acts not in every sense strictly honorable.

With these remarks, and in full confidence that you will act impartially in the approaching contest, I now cheerfully subscribe myself your friend and fellow citizen.

JOHN SHERWOOD.

P. S. There appears to have been a report put in circulation, no doubt by some designing person, tho' I am not apprehensive that such a report can be entitled to much credit. It is this, that my motives in announcing myself a candidate and publishing my other circular, was not so much my own election, as the election of some one or two other individuals, who had previously bought me over to their interest; and that my circular was the production of such combination. Now it seems to me improbable that any person, who has had intimate acquaintance with me, should give any sort of credit to such a report, and to such as are not, I would say, that I am as innocent of the charge as the child yet unborn; that my acts, were not intended purposely for the promotion of any individual on earth but myself; that the language in that circular, which it appears has created such suspicions, was used for the sole purpose of defending my own interest; and that no other individual in existence, but myself, was concerned either in composing or writing that circular. J. S.

"MR. SWAIN:

As I understand the number of copies printed of Capt. Cox's Circular, is too small for the call which is likely to be made for that interesting document, I wish you to insert it in the "Citizen" of this week. If no body else will pay the additional expense, I will. Yours, &c."

Well, here it is verbatim.—Ed. Cit.

CIRCULAR.

Friends and Fellow Citizens of this District.

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 fit 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 different counties with my Brother A. Rencher, to form new acquaintance with my friends in this district. But not knowing that I can have the opportunity 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 one of the two that are asking at the hands of the people, who alone has the power of electing one of us two, to the honor of a seat in the next Congress.

Fellow Citizens; after looking and reading of Mr. A. Rencher's hand bills, I have thought of the condition of our government, and what spend thrifts our big men is with public money—to which never one hour of hard work in the corn field have they done for this, but pick poor men's pockets for their spending money. Now if this is not the truth, I am no judge of public business. And not only all of this, but look at the expenditures of the government; you must be struck with the great and alarming increase within the last four or five years. And if in five or six more years the increase of the expenditures should increase as they have, what will the people do! for we are tight rubbed to raise money enough to pay our tax now; and by that time, say what will you do! why I say we will have to live in as tight law as if we were under the British government; for it will take one third of produce from us to pay our tax and then what will the people do!

Why, I think now something about the surplus revenue that is now in the hands of our general government and what must be done with it? or what