

SOUTHERN CITIZEN.

BY BENJAMIN SWAIM.

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

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By B. Swaim
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THE EDITOR.

Legal Department

IGNORANCE OF THE LAW EXCUSETH NO MAN.

ASHBOROUGH, N. C.

Saturday, August 12, 1837.

A Query as to the powers of a Deputy Sheriff, is received; and will be duly attended to.

FOR THE SOUTHERN CITIZEN.

(Questions by a Subscriber.)

1st. If one be indicted and acquitted, has the Clerk a right to issue an execution against him for his own cost, (for instance, witnesses he had summoned to establish his innocence) if not, how are his witnesses legally to collect their attendance dues?

2nd. When an individual is convicted in Court, and fined,—is it legal for another person to come in and confess judgment to the Clerk, for fine and cost; if so, does such confession of judgment affect the interest of prior creditors?

ANSWER.

1. The Clerk is not only at liberty, but absolutely bound to issue Execution against the defendant for his costs. For after the suit is decided; there is no other way for his witnesses to get their attendance.

While the suit is pending, the witnesses may warrant the defendant for their attendance, and recover before a magistrate.

2. Such a judgment as that mentioned in the 2nd Query, is not absolutely void, but voidable only. A Court ought never to enter such a judgment; and it would at any time be set aside on a *Certiorari*, *Writ of error*, or other process, as the case may require. But while it remains in force, it has precisely the same effect of any other judgment.

This being Court week, we have not time to search for authorities; but we have no doubt that the law is as above stated.

From the Jackson Truth Teller.

LEGAL—IN THE SUPREME COURT AT JACKSON—APRIL TERM.

George McClain vs. The State.
Opinion of the Court delivered by Judge Turley.

At the October term, 1836, of the Circuit Court of Weakley County, George McClain was convicted of the crime of murder in the first degree. During the progress of the trial, several bills of exceptions were filed for irregularity in conducting the same, and after the verdict had been returned, a motion was made for a new trial founded on the af-

fidavits of John Clayton, one of the Jurors, and Martin B. Brim. The affidavits of Clayton and Brim, shew that after the Jury were sworn, and during the continuance of the trial, which lasted several days a part of the Jury did very frequently of a night after they had retired from the Court, absent themselves from the balance of the Jury without being under the charge of an officer, and remain absent for the space of fifteen or twenty minutes.

The principal question in this case is, whether the Court below erred in refusing to grant a new trial for the causes set forth in their affidavit. We think it did. The right of trial by Jury, has always in England and in this country been considered of such vital importance to the security of the life, liberty and property of the citizen, that great care has been taken to prevent it from being tampered with. The person accused may have the full benefit of a judgment by his peers, it is absolutely necessary that the minds of the jurors should not have prejudged his case, that no impression should be made to operate on them except what is derived from the testimony given in Court, and that they should continue impartial and unbiassed. These objects can only be attained by selecting those who have no preconceived opinion as to the guilt or innocence of the prisoner, and by not permitting them to separate from each other after they have been sworn and mingled with the balance of the community. This was directed to be done in the case now under consideration, but was not complied with. The affidavits which are contradicted shew conclusively that several of the jury repeatedly separated from the others without the care of the officer appointed by the court to attend them, and were absent for the space of fifteen or twenty minutes; long enough to have been tampered with if there had been any disposition to do so. It is not necessary for the prisoner to prove that they were during their absence subjected to improper influence through others—it is sufficient if they might have been—there would be no safety in a different rule of practice, for it would be almost impossible ever to bring direct proof of the fact that it was done.

This question has been fully examined by the General Court of the State of Virginia, in the case of the Commonwealth against John McCall, 1st Virginia Cases, 271. In that case the separation of the Jury was not under more exceptional circumstances, nor for a longer time than in this; neither was there proof of any actual tampering or conversation on the subject of the trial with the Jurymen. The Court held that it was not necessary that this should be proven in order that the verdict should be set aside and a new trial granted.—This decision is, we think, supported by the English authority, 1st, Chitty's Criminal Law, 634.

The case of the State vs. Merrill Miller, determined by the Supreme Court of North Carolina at the June Term, 1836, is referred to by the Attorney General as contradictory to this proposition. In that case the Jury had been permitted to retire under the custody of the Sheriff. In a few minutes afterwards the Sheriff returned with eleven of the Jurors only; but the other juror returned in less than two minutes, and when the Judge expressed his strong disapprobation of his conduct, excused himself by stating that he was obliged to stop aside to obey the calls of nature. This was insisted upon as a cause for a new trial, which was refused by the court below. On an appeal to the Supreme Court it was held by Ruffin C. J. & Daniel J. to be a reason for applying to the discretion of the Judge in the court below for a new trial, and not to render the verdict a nullity and a *venire de novo* proper. But Judge Gaston dissented and held that minor irregularities are grounds for new trials addressed to the discretion of the Judge who presided at the trial, but that any unauthorized or unexplained separation of a juror from his fellows, in a capital case in law, vitiates the verdict and a *venire facias de novo*, should be awarded.

It is to be observed of this case, that under the circumstances in which the Juror separated from his fellows, and the short period of time (viz. two minutes) which he remained absent from them, it was impossible to make any influence could that therefore his case

stood very nearly as if there had been direct and positive proof that the Juror during his absence had seen or conversed with no person whatever. Chief Justice Ruffin in his opinion says, "I cannot think that an absence of a Juror for two minutes from the body of the jury without communicating with any person, as far as appears upon this or any other subject, does by itself annul the finding." If the absence had been for a period of time sufficiently long to have enabled persons to tamper with the juror, or to operate on his hopes or fears, would the judge have said the same thing?—we apprehend not, for stress is laid upon the time, "two minutes." But if the decision is to be considered as sustaining the proposition as broadly as has been contended for, to wit: that no unauthorized separation of a Juror during the progress of the trial will vitiate the verdict unless there be proof of tampering with the Jury, we cannot recognize the authority of the case, especially as it is much weakened by the dissenting opinion of that able lawyer, Judge Gaston.

There are several other questions presented by this record we consider unnecessary to examine as the points already considered are decisive of the case.—The judgment will be reversed and the cause remanded to Weakley county for a new trial.

Lieut. Powell's Exploring of the Coast of Florida.—This gentleman went with boats in the Vandalia sloop of War, in October last, to examine the "Everglades" (Mangrove Islands) forming the innumerable islands, inlets, swamps, lagoons, &c. on the south coast of Florida has furnished a highly interesting report on this subject from which we make the following extracts:—

We ran along the coast for the most part in the night, looking into Marjette bay and Long river, on the 17th. This is the real Shark river, their being nothing but small creeks between it and Cape Sable; and Long River does not deserve the name, being only an outlet for the waters of the Everglades, through as many mouths as there are islands, these being innumerable. We pulled with the oars full twenty miles on Long river, and came out to sea a few miles from our starting point.

The entire coast seems to be formed of a mass of mangrove islands, packed in upon each other, and separated from the water by the everglades by a lagoon fresh or salt by turns, as the tide or waters of the glades prevail. To Snake river it would be difficult to find an acre of dry land on which to encamp.

From the mouth of this Snake river to Pavilion key, several of these islands present a sandy beach, with here and there a patch of dry land; and such indeed is the character of the coast as far as Cape Roman. The Indians who frequent this country are fishermen, and seem to have left their usual haunts.

Early in the morning anchored in the Caximbo river, where was once a settlement of Marcos Indians.

We spent a week in the examination of the islands and numerous lagoons to the distance of eighteen or more miles from our encampment. Mr. Coarles Johnson engaged to show us the dwelling of the Indians; but after a most laborious excursion through lagoons, and swamps, where we sometimes cut a passage for the boats through the mangroves, we returned to the camp, unable to discover traces of Indians of their villages.

We anchored our boats that night in the great inland basin of South Florida, known as the Exerglades. We had now a high view of the coast that encircles the glades. Forests of pines and cypress enclosed us on all sides like a black wall; while on the other, the grass, which covers the whole surface of this shallow lake, offered no obstruction to the eye as it wandered over the dreary waste. Here on the mainland, or on the islands in the glades if there were Indians so commanding was our position, that their fires would certainly have been seen by us. With the dawn we pushed into the grassy sea before us, and endeavored to approach a small island seen in the distance. The horizon as we progressed, but the boats, although the smallest of our little fleet, could not near either of

them. The matted saw grass, which wounds like a razor, and the deep sluices, which intersect the glades, prevented access to them on foot. I found it impracticable to navigate the glades, at this stage of water, in keel boats, though no labor had been spared; and we reluctantly commenced our return to the camp.

The arrow root abounds, and is indeed almost peculiar to this section of Florida. It is the bread, and the chief sustenance of the Seminole Indians, and without which they might be starved.

We found the coast of the continent a low, and, at high tide, an inundated shore, defended from the sea by a breast-work of tangled mangroves, nearly inaccessible. If it be inhabitable, it is barely possible to credit it. Ten miles from the eastern point of Cape Sable, we find the first sand beach. A strip of shelly land separates the sea from the Everglades; and from the appearance of the soil in this dry season, it must be inundated half the year.

THE BLACK DEATH.

There is a paper in a late number of the Eclectic Medical Journal, upon this horrid disease—an epidemic that pervaded Europe, Asia and Africa, in the fourteenth century, and spread desolation and death wherever it made its appearance.

Some idea may be formed of the virulence of this pestilence from the high rate of mortality that it induced; thus at Cairo from 10 to 15,000 died daily, being as many as in modern times, great plagues have carried off during their whole course; in China more than 13,000 perished; India was depopulated; Tartary, Mesopotamia, Syria, and Armenia were covered with dead bodies; in Caramania and Caesarea none were left alive on the roads—in the camps—in the caravanseries—corpses alone were seen; in Gaza 22,000 people and most of the animals were destroyed; Cyprus was deprived of all its inhabitants. In the countries of the East, China excluded; twenty three millions, eight hundred and forty thousand individuals fell victims to it. It swept over the water as well as the land, ferreting out the doomed on the bosom of every ocean, sea and river; so that ships destitute of crews were drifting about at the sport of the elements spreading the seeds of disease whithersoever they chanced to drive ashore.

Equally malignant was it in Europe; 60,000 dying in Florence; 50,000 in Paris; 100,000 in Venice; the same number in London; 124,433 Franciscan Friars in Germany, &c. &c. More than two hundred thousand small towns and villages lost every inhabitant. In many parts of France not more than two out of twenty escaped; in one Parisian Hospital alone the daily mortality amounted to 500. In one burial ground in London, 50,000 corpses, were arranged in layers and buried in large pits. In Avignon the Pope found it necessary to consecrate the Rhone, that bodies might be thrown into it without delay, as the church yards could not contain them.

Even in Germany, which was a favored land, one million two hundred and forty four thousand, four hundred and thirty four died. Italy lost half its inhabitants, some portions of it still more; for example, Padua, Corsica and Sardinia two thirds; Veni, three fourths, and the surviving fourth fled from the city, leaving it forlorn and desolate. At Florence a prohibition was issued against publishing the deaths; and tolling the bells at funerals, that the living might not abandon themselves to despair. Even the frozen regions of Iceland and Greenland did not escape the

scourge. It was at this period that Denmark and Norway were obliged to suspend their Northern voyages, and the lowering icebergs so accumulated on the Greenland Coast, as to prevent all subsequent communication with the Colony there located; and "no mortal from that time forward, has ever seen its inhabitants." Europe lost during the prevalence of this epidemic twenty five millions of inhabitants.

Merchants whose earnings and possessions were unbounded, coldly and willingly renounced their earthly goods: They carried their treasures to monasteries and churches, and laid them at the foot of the altar; but gold had no charms for the monks, for it brought them death. They shut their gates; yet still it was cast to them over the convent walls. People would brook no impediment to the last pious work to which they were driven by despair. When the plague ceased, men thought they were still wandering among the dead, so appalling was the livid aspect of the survivors, in consequence of the anxiety they had undergone, and the unavoidable infection of the air. Many destroyed themselves as if in a frenzy; funeral ceremonies were neglected; morals every where deteriorated; and the service of God was in a great measure laid aside; the churches were deserted; the people remained uneducated; parents neglected their children, and children abandoned their parents; the crops were blasted; the beasts of the fields, the birds of the air, the inhabitants of the briny deep perished by thousands and tens of thousands. Parliaments and the Courts of Justice were closed every thing stood still, save the working of men's evil passions; but these still warred violently, as may be learned by reading of the bloody quarrel that raged between Edward III, and Philip VI.

The Natural phenomena that prevailed just previous to the outbreak of this pestilence, and the moral effects that were witnessed immediately subsequent thereto, were of a strange order, but we cannot, now, dwell upon them. In the whole range of history, we know not of a period that opens so wide and glorious a field for the writer of romance, than the one of which we have been speaking, abounding as it does with the grand, the terrible and the sublime.

SOVERIGNS OF EUROPE.

The following are the ages of the respective sovereigns of Europe:—

	Years.
The King of Sweden, (Bernadotte)	72
" Pope of Rome,	71
" King of England,	71
" King of Denmark,	55
" King of Prussia,	55
" King of the Netherlands,	65
" King of the French,	64
" King of Wurtemberg,	55
" Sultan,	51
" King of Bavaria,	50
" King of the Belgians,	46
" Emperor of Russia,	40
" King of Sardinia,	38
" King of Naples,	36
" King of Greece,	22
" Queen of Portugal,	17
" Queen of Spain,	6

Heaps of Ice.—It is estimated that the piles of glaciers which lie heaped upon each other upon the gorges and sides of Mount Blanc, reach to the height of 8000 feet perpendicular; and that the snows of the upper parts occupy an additional space of 4000 feet perpendicular—thus making together, a mass of twelve thousand feet of ice and snow without including the irregularities of the surface.