

SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

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

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TERMS.

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THE EDITOR

LEGAL DEPARTMENT

INSURANCE OF THE LAW RECORDS NO. 24.

ASHBOROUGH, N. C.

Saturday, Sept. 23, 1837.

INTEREST—LIMITATIONS.

Editor of the Southern Citizen:

Sir: I wish you to say in your next paper, or as soon as you can conveniently, what time a note of hand can run before it is out of date, or whether it is out of date at all or not? and whether there is any difference made, (and what) between notes with seals, or without?

Some contend that a note is out of date after ten years; others say that a note is never out of date, but cannot draw interest after it doubles itself; or in other words, that the interest cannot be more than the principal.

I have not seen any law which makes a note out of date, or to stop the interest at a certain time.—I have written this in a hurry; you will correct it, and give the answer. Yours, &c.

A SUBSCRIBER.

ANSWER.

1. A Bond for the payment of money has a Seal; a Note of hand has no Seal. The two instruments are usually in the same form. And whether there be a Seal or not, forms the technical distinction.

A Note of hand is barred by the Statute of Limitation in three years from the time it becomes due; unless it be revived by some subsequent promise, or other circumstance that can fairly be construed into an implied promise.

2. A Bond is never barred absolutely by the Statute of Limitation. By act of 1823, presumption of payment arises in ten years. This throws the burden of proof on the plaintiff; but if he can prove, either positively, or by such circumstances as go to show that the Bond has not been paid,—he can still recover; and that too (we should say) to any indefinite length of time: for the law has not limited the time within which the plaintiff may avail himself of this proof.

4. The notion that a bond cannot draw interest after it has "doubled itself" is erroneous. The error we presume arose from the rule of law restraining the accrual of interest on penal

bonds. The penalty of a Bond is usually fixed at double the amount of principal really intended to be secured. And the rule is, that you cannot recover on a penal bond more interest than the amount of the penalty, exclusive of the condition or the principal. On the subjects of this article, see "Man of Business"—Seals, Vol. 1, page 10.—Penal Bonds, ib. 265;—Warranting on a bond ib. 98;—General nature, ib. 107;—Bonds and notes, 2 vol. 151;—For articles not money, ib. 167.

EXUTOR'S COMMISSIONS.

(Question by a Subscriber.)
"Is an Executor entitled to commissions on money paid to the widow as a specific legacy under the will?"

ANSWER.

It is fully settled that no commissions can be allowed to an administrator on the payment of distributive shares. And we think it equally clear that an Executor is not entitled to commissions on the payment of legacies, whether to the widow, or any other Legatee.

SUNDRY QUESTIONS

(by a Subscriber.)

1. How is a man to take the benefit of the act of 1822, relative to Insolvents after he has been whipped for felony or other misdemeanor?

2. Must all property that is seized by a Sheriff, constable or coroner, be sold at the court-house of the county where it was seized?

3. How many freeholders must be present when property is sold by execution?

4. A debtor lives on the land of his daughter (who is a minor) without any special contract of rent, for money or otherwise, can the daughter or her guardian prevent the crop of the debtor from being sold for his debts, as it is on her premises?

5. If a contest arises in the county court about the binding of an orphan; and one of the parties is greatly injured by the decision of the court, can he carry the case to the superior court by appeal?

ANSWERS.

1. Nothing short of a conviction of felony will authorize the whipping of a free man. An infamous person, which means such a one as is deprived of his evidence &c. in consequence of having been convicted and punished for infamous crime, never can take the benefit of the insolvent debtor's act, unless the courts extend more liberality in the interpretation of acts of Assembly than is usual, or than we think their judicial function admits. But the question has never been presented for legal adjudication in this State since the passage of the act of 1822; and we cannot therefore say with certainty what indulgence might be given to the necessity of the defendant's situation. He must necessarily be at least as incompetent as a free negro. And the Legislature seems to have thought the latter was not included in the provisions of that act, by the subsequent extension of its provisions so as to embrace free negroes &c.

2. "All property" sold under execution, is not necessarily to be sold at any court-house. But it must be sold in the county where it was seized.

3. So there is a plurality (two) bids, it is sufficient. They need not necessarily be freeholders.

4. Neither can she, or her guardian prevent the sale of the debtor's interest in the crop. The guardian does not comply with his duty according to law, or he would have had a contract, made by public auction, evidenced too by a written lease with covenants to keep in repair &c. But this we express by the by;—it does not effect the rights of the creditor in any way.

5. When two parties are contending

for an orphan child, and the county court decides in favor of one of them, the other cannot sustain an appeal to the Superior court. For it is a matter of sound discretion in the county court. But we presume (though we never knew the question to arise,) that if the county court were obstinately to refuse to bind an orphan at all, the superior court would, on sufficient cause shown, compel the inferior court to do its duty by a writ of Mandamus or Procehdendo.

THE DYING BED OF A MOTHER.

Of all the relations on earth, none are more sacred than that of a mother. If any person this side of heaven, has claims to superior attention, it is an affectionate, pious, aged, helpless, suffering, dying mother. Sixteen days my mother had been suffering keen distress of body.—With the exception of one short interview, I had been absent; but now called to gaze upon her dying features. I had thought that I could command my feelings on any emergency whatever, but their gushing tide now overwhelmed me. Others told me that she was triumphantly waiting for the chariot to take her home; but I wished to hear the sweet testimony from her own lips.—Again and again I went to her bed side, took her hand in mine, with all full resolution to inquire concerning her faith and hope; but as often did the swelling tide stop my utterance—the scenes of infancy all came up in view, and they seemed as it were but yesterday. Her sprightly step, her once blooming features, her soothing voice seemed present before me, renewed in youthfulness and vigor. The hand so often outstretched to save me in the years of childhood, was now growing cold—the eye that once sparkled with rapture at my infantile sports, already half closed—the lips that first told me who made me, and taught me to say "Our Father, who art in heaven," were about to be sealed forever in death—these impressed upon the feelings in a measure, which I shall not attempt to describe.—Once more I stood by her bed side and with fluttering voice, inquired: "Mother, have you still unshaken faith in God?" But the thrilling name of mother vibrated no longer upon her ear; she answered no more by words or signs. Alas, I kissed the clay-cold hand, and exclaimed, "Farewell, mother, my much beloved mother!" It was no less affecting to see a venerable old man, whose hairs were bleached by the frost of nearly seventy winters, after he had done all that love could suggest, weeping over his dying partner, with whom he had lived almost half a century, and still inquiring, "Do you want anything, my dear? What more can we do for you? If you cannot speak, give me a sign."

But she no longer responds to the most endearing names. Alas, we had followed her to the brink of Jordan, and could go no further. She had already plunged amidst its cold waves, and must go alone. We gazed upon this solemn scene till Faith whispered, "There is a friend that sticketh closer than a brother." Hope sprung up, and with a firm voice, exclaimed, "If we believe that Jesus died and rose again, even to them also, which sleep in Jesus, will God bring with him." Love expanded her wings, and triumphantly shouted, "Blessed be God, who giveth us the victory through our Lord Jesus Christ."

A LAKE STORY GOOD AND TRUE.

A friend of mine built a good schooner, and through the request of the master workman, and presentation of a set of colors. She was christened Thomas H. Benton. She cannot get a load in any port on Lake Erie, even where there is freight to send, and the way she is jeered with "T. H. Benton, flying at her mast head, when in harbour, is a caution; are you loaded with yellow boys, will you take a load of shiners to Missouri, &c. and so on—her owner says she is in danger of being lynched and as her name cannot be altered except by an act of Congress, it has been suggested that he draw black lines around the magic name and write upon the flag 'expunged.'—Dayton, Ohio Journal.

CURSORY REMARKS ON A WIFE

"Of earthly goods, the best is a good wife; A bed, the bitterest curse of human life."

There is reason to rejoice that those early ages of society are past when a man purchased a woman to be his wife, as a butcher purchases an ox or a sheep to be food; and valued her only as she contributed to his gratification. Innumerable instances might be collected from the early history of various nations, but the following will be sufficient: Abraham obtained Rebekah, and gave her to his son Isaac for a wife. Jacob served Laban fourteen years for two wives. When David had Saul's daughter given in marriage, it was said, "The king desireth not any dowry, but an hundred foreskins of the Philistines." In the Iliad, Agamemnon offers his daughter Achilles for a wife, and says that he would not demand for her any price. But those days are past, and wherever such practices have prevailed, men could not have for the fair sex that tender regard and esteem which constitute so essential a part of the genuine affection of love.

In this age, matters are different: the feelings are wrought upon—the man beholds the object of his affection with a longing wish to claim her for his own—he observes in her that capital article, sweetness of temper, which manifesting itself in mild looks and gentle manners, is perhaps the first and most powerful inducement to esteem in a cultivated mind.

The amiable disposition, the gentle and insinuating manners of the sex, are all highly respected by the man, who, more robust, bold, and vigorous, is qualified for a protector. The female being delicate and timid, requires protection, and is capable of making an engaging figure under the good government of a man possessed of penetration and sound judgment.

It would be injustice not to mention the peculiar and essential part of female value, modesty, without which, no woman is likely to command the esteem and affection of any man of sound understanding; therefore we consider the invaluable grace of a chaste and modest behaviour the best means of kindling at first, and not only of kindling, but of keeping alive and increasing, this inexpressible flame.

There is no reason to hesitate in saying that a good wife is one of the most valuable treasures a man can possess in this life. She causes his cares in this world to sit easy, adds sweetness to his pleasures, is his best companion in prosperity, and truest friend in adversity. She is the most careful preserver of his health, the kindest attendant during his sickness, a faithful adviser in distress, a comforter in affliction, a prudent manager of his domestic affairs, and, in short, one of the greatest blessings that heaven can bestow upon man.

Should it, however, unfortunately prove otherwise, she will be her husband's greatest trouble, will give him the utmost anxiety, and be a clog to him the remainder of life. Therefore we would advise every young gentleman, before he tampers with this passion, to consider well the probability of his being able to obtain the object of his love. If he is not likely to succeed, he will do well to avoid the company of the beloved object, to apply his mind attentively to business or study, and endeavour, if possible, to fix his affections on another, which it may be in his power to obtain. The affections reciprocally gained,

mutual love will endear them to each other, and make constancy a pleasure; and when their youthful days are over, esteem and genuine regard will remain in the mind, making pleasant, even in old age, the company of such a pair, in whose actions are manifested the most tender affections of husband, wife, lover, friend.

The Merchant.—The New York Express thus elegantly sketches the character of the Merchant:

"The merchant is the great Pioneer of Trade & Commerce, who stands upon the look-out, and marks the signs of the times. He throws his horoscope over the vastness of the sea, and takes note of the wants of all the lands. The ship is his winged messenger—the oceans and rivers are his canals. The world is his boundary. The flag of his own home he sends in triumph from the numerous harbors under his eye, where the galley of the Phoenicians once floated, or the canoe of the savage alone had sway. He introduces his countrymen to all the earth. Now he is in Muscat, anon in Chili—laden here with the teas and silks of China, and here with the logs and lumber of the East. His eye, too, is ever upon the land where he lives, and it is his pride and his boast to aggrandize it in the eye of the world. Rail roads are traced out at his bidding. Canals are made to go over rivers and rocks. His steam messengers stem the strength of our rivers. His wand stretches over the face of agriculture too. The farmer smiles at his presence. Towns and villages spring up at his command. He makes all to laugh and to smile wheresoever he is."

Americanism.—"The last time I was in Rhode Island (all the galls sings there, and it's generally allowed there's no such singers any where, they beat the Evv-talians a long chalk—they sing so high, some on 'em, they go clear out o' hearin' sometimes like a lark.") "He looked just like a man that finds whistlin a plaguy sight easier than thinkin'." "Politics take a great deal of time, and grind away a man's honesty near about as fast as cleaning a knife with brick dust; 'it takes its steel out.'" "Judge Beeler—I dare say you have heard tell of him—he's a funny feller—he put a notice over his factory gate, at Lowell; 'No cigars or Irishmen admitted within these walls, for, said he, the one will set a flame-a-goin' among my cottons and t'other among my gals.'" No mortal soul can live in Nova Scotia. I do believe that ere country was made of a Saturday night after all the rest of the universe was finished."—Sayings and Doings of Sam Slick.

As you see the spark fly upward—sometimes not falling to the earth till it be dark and quenched—thus ears, whether it recks not, so that the direction be above, the luminous spirit of man, who aspires to Truth; nor will it look to the vile and heavy clay from which it sprang, until the light which bore it up and be no more!

WONDERS.

'Tis wondered what caused a certain Editor, not a hundred miles from here, to get "kicked" some few weeks since.

'Tis wondered what gentlemen that was that called on a certain sickly in the town of Greensboro' for a shave, and had his face well lathered with salt-water, alias U—e, and his face scraped with a dull razor!—I know."