

# SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

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

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ASHBOROUGH, N. C. SATURDAY, NOVEMBER 18, 1837.

[OF \$3 AFTER 3 MONTHS

**SOUTHERN CITIZEN,**  
By B. Swain  
Every Saturday Morning.

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THE EDITOR.

### LEGAL DEPARTMENT

IGNORANCE OF THE LAW EXCUSSES NO MAN.

ASHBOROUGH, N. C.

Saturday, Nov. 18, 1837.

### INTERESTING LAW SUIT.

From the Banner.  
**CIRCUIT COURT OF THE U. S.**  
District of West Tennessee. Before Judges Catron and Brown, Nashville, Sept. Term, 1837.

Anson Moody  
vs.  
Shepherd & others.

Action of Trespass.

Friday, Sept. 22.

The declaration in this case sets forth, that Anson Moody, a citizen of the State of Illinois, by attorney, complains of Egbert Shepherd, Jos. Jones, Jacob F. Farrington, John D. Ware, Henry Johnson, John B. Ashe, Edgar Sanders, Allen J. Barbee, Egbert Haywood, Thomas Owen, Richard H. Jones, Thomas Whitelaw, James Whitelaw, Robert F. Maclin, Samuel Oldham, Henry Owens, William B. Grove, Howell C. Taylor and Robert Nelson, citizens of the State of Tennessee, of a plea of trespass; for that the said defendants, on the 4th of September 1835, with force and arms, &c. assaulted the plaintiff, to wit, at the district of West Tennessee, and then and there seized and hid hold of the plaintiff, and imprisoned and restrained him in his liberty against the laws of the land, and him then and there beat, wounded, and evilly entreated, and with force of arms violently bound the plaintiff with strings.—And, continuing their outrage against him, grievously abused and forcibly stripped him, tearing his clothes from his body, and with a whip violently inflicted many blows and strokes upon his bare back, and with a hot iron branded him on the cheek, cruelly and inhumanly, against the laws of the land. By means of which several promises, he, the plaintiff, was then and there greatly hurt, bruised and wounded, and became and was sick, sore, lame and disordered, and so continued for a long space of time; and during which time he thereby suffered and underwent great pain, and was hindered and prevented from performing and transacting his necessary business, &c., and also thereby he was forced and obliged, by the violence of the defendants, to leave the State of Tennessee; and to lay out and expend a large sum of money in endeavoring to be cured of his bruises, sickness, &c.—Therefore the said plaintiff is injured and sustained damages to the amount of \$20,000.

To all of which the defendants, by counsel, plead Not Guilty.

Before the Jury was called, Mr. Thompson, for the plaintiff, raised the question as to the competency of certain jurors whose name had been returned by the Marshal. In supporting his objection Mr. T. suggested to the court that the nature of the action now at issue, was for damages for an injury inflicted upon the person of the plaintiff, by certain citizens of Haywood county, Tennessee, self constituted as a tribunal of justice, and it is known to your honors, said Mr. T., that a similar court was held, and in one instance inflicted summary punishment in this city, about the same time; therefore the plaintiff respectfully objects to the members of that court as triers in this case. The court observed that as there was a large penal presented, there could be no difficulty in selecting a jury, and counsel on both sides could make their objection when the gentlemen were called.

Jury, selected.—Marshall T. Pinkard, Robert Bradford, William Faulkner, Liston E. Temple, Francis McGavock, Joseph W. Horton, Russell Dance, Philip Shute, Sampson Williams, Benjamin Drake, Lewis Williams and Anderson Cheatham.

The death of Richard H. Jones, one of the defendants, being suggested, the suit was abated as to him.

James Sevier, a witness for the plaintiff, called: Was in Brownsville at the time of trespass, and knew the plaintiff was tried and whipped. Did not see the whipping, but heard the lashes, and saw plaintiff's back afterwards. He was severely bruised, though witness saw no blood. Saw the brand on plaintiff's cheek—could not distinguish letter.

Punishment inflicted after Light, before a large crowd. Heard a drum beating on the square about same hour. Knew none of the defendants at the time, and could not say who participated in chief. Saw plaintiff in custody, before the trial. Is acquainted with some of the defendants, now, and believes that Taylor and Whitelaw were sitting in judgment on the trial. Did not hear the verdict of the court, but heard one of defendants (Jones) say that plaintiff ought to be hung.—Plaintiff's wife was in Brownsville at the time, but not present at the punishment. There was a jury—number and names not known. Heard nothing said of dividing damages. Saw Maclin, one of the defendants, but did not hear him encourage the proceedings. A motion, put to the crowd, to hang plaintiff, was overruled. Believes there was one hundred lashes inflicted—supposed to be with a horse whip or cow-hide. Col. Henderson, a citizen of Brownsville, prevented from addressing the crowd, by an uproar. Could not say that defendants joined in the noise. Plaintiff was kept in custody several days.

Cross examined.—Plaintiff was tried on suspicion of stealing a negro, the property of Shepherd, one of defendants. Witness were examined on the trial. Saw plaintiff brought into town by a guard: witness believes on Monday, 31st August, 1835.—Trial commenced on that day, but was postponed until Saturday, to allow plaintiff to get his witnesses.—Two-thirds of the county of Haywood present at the trial. Great excitement pervaded the crowd. [A question as to what portion of the crowd, cried hang Plaintiff, was here objected to by plaintiff's counsel. Motion overruled.]

Question by the Court.—Mr. Jones who cried out hang him, witness thinks was acting as the Sheriff of the court.

Cross examination continued. Could not say what number of voices cried out hang him. Taylor remonstrated against hanging plaintiff. Court selected a committee of twenty-five to award punishment—selected, as witness was told by Taylor, with a view to award the punishment less summary than hanging. Committee named, after jury had rendered a verdict of guilty. [A question as to character of committee, objected to by Plaintiff's counsel: motion overruled.] Members of committee of different ages; from different portions of the country; having a deep interest in the common welfare, and all legally competent to serve as jurors. Defendants sent for plaintiff's witnesses,—in some instances forty miles, whose expenses were paid by defendants. All the drinking houses in Brownsville closed on day of trial at the request of a member of the Court. Shepherd's negro in jail on Monday. [The witness was here stopped by plaintiff's counsel, from going into a detail of the circumstances which took place on Monday. The question made as to the relevancy of the proposed testimony was argued at great length by the learned counsel on both sides, the discussion consuming the balance of the day, and the whole of Saturday morning.]

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Saturday Evening, Sep. 23.

[The court being divided in opinion on the question of evidence, made by Plaintiff's counsel yesterday, the witness (Sevier) was directed to proceed.]

Cross examination resumed.—A ring was formed by crowd on Monday, and the negro placed in it, and directed to point out the man who had seduced him from his master. He recognized plaintiff as the man, and crowd cried out guilty. Plaintiff was passive in the hands of the crowd.

Examination in chief resumed.—The circle was twenty or thirty yards wide. Plaintiff stood in front rank. Shepherd (the negro's master) was with the area, and walked round with the negro. Access could be had to the windows of the jail where negro was previously confined, so that conversation might be held with inmates. Negro laid his hand on plaintiff when told to point out the guilty man. Negro passed plaintiff before recognizing him. Witness heard a voice in the crowd say he had passed the man.

Thomas Skillarn, called for plaintiff.—Corroborated the evidence of Sevier as to the punishment; which he saw inflicted. Stripes laid on with a large whip; plaintiff in a standing position.—Plaintiff branded with the letter R, and ordered to leave the country. Heard drum and fife about dark. Heard the sentence of the court (as above), but could not name the members.

Cross-examined.—Did not hear an open expression of opinion from the crowd, before or after sentence was pronounced.

Question by a Juror.—There were two executioners.

Examination in chief, resumed.—Has since become acquainted with Jones, one of the executioners, and with two of the defendants, Shepherd and Taylor.

Question by Mr. Fletcher.—Believe that he saw Shepherd and Taylor on Saturday.

G. W. Cadwell, called for plaintiff. Was in Brownsville on Monday. Went there at the request of plaintiff's father. Asked to see plaintiff and was refused. Heard the trial of plaintiff before a regular justice's court, by which he was acquitted. Shepherd, followed by several others, jumped over the bar, with a cocked pistol; seized plaintiff by the collar and said: "I have no legal evidence to convict you, but you have sworn to take my life, and you d—d rascal I'll have yours." Excitement in the crowd great. Was afterwards in court house and saw Shepherd and Jones in conversation with plaintiff. "If you will go to jail you shall not be hurt." Witness went to jail with plaintiff. Witness lives in Haywood; plaintiff in Fayette county. Saw two or three drawn pistols at the time Shepherd seized plaintiff by the collar. Plaintiff left Fayette for Illinois four or five days after he was punished. Plaintiff a man of family. Was greatly injured in a pecuniary way by being forced to leave the State. Plaintiff was a merchant, and partner with a man by the name of Johnson in a country store in Fayette. Witness here detailed several circumstances to prove that plaintiff's loss was a serious one.

Cross examined. Did not hear or see any witness before justice's court. Several questions asked by the court, but cannot say they were put by qualified witnesses. Shepherd promised plaintiff in the court house that he should not be injured on his way to jail. Witnesses followed him to jail-door. Plaintiff's stock consisted of hardware—such as pots and ovens, [a laugh] and a few dry goods. Plaintiff left fifty head of cattle and some hogs when he removed to Illinois, which were lost to him.—[Witness here contradicted himself in several particulars, became confused, and on again being examined varied his narrative materially, from his first statement.]

Thomas Barret, called for plaintiff. Corroborated the testimony of Sevier

as to the punishment. Believes that Taylor was a member of the court.—Was not in Brownsville on the first day of trial. Was called before the court to give evidence. Was not sworn.—Saw Shepherd on the ground but could not say what part he took in the proceedings.

Cross examined.—Saw Shepherd on Saturday. Witness was called to give evidence at the instance of plaintiff.

Wm. R. Hess called for plaintiff. A warrant was read on Monday by three magistrates, against plaintiff on a charge of stealing Shepherd's negro, plaintiff was acquitted. Thereupon Shepherd interfered with pistol in hand, demanding a return of the warrant, swore that he would take plaintiff into his own keeping, plaintiff, as he alleged had threatened his life. Magistrates refused to give up the warrant, and acquitted plaintiff in legal form. Saw Oldham, Taylor, Whitelaw, Barbee, Jones and R. Maclin on the day of trial. Witness was called to take part in the proceedings, but replied that he did not practice in such courts. [A laugh.] Witness does not live in Brownsville, he hangs on there. [A laugh.] Plaintiff seriously injured by leaving the country. Attachments were sued out against plaintiff's property, which he, witness defended in Tipton county. Cannot recollect Shepherd's words, exactly on seizing plaintiff in the court room; believes he threatened his life. Saw plaintiff in jail—his wife present. Cannot say who applied the brand to plaintiff's cheek.

Cross examined.—Defendants proposed on Monday to send for plaintiff's witnesses, and trial was postponed until Saturday for that purpose. No testimony given before the legal court.—Shepherd wished to withdraw the prosecution, but magistrates refused and dismissed plaintiff in form. Heard plaintiff deny to Shepherd that he had threatened his life. Shepherd presented his pistol at plaintiff.

Monday, Sep. 25.

[On resuming the cause this morning, the court stated that they had reconsidered the question of evidence, raised by plaintiff's counsel on Friday evening, and after great deliberation, and a thorough examination of the authorities on the point, were compelled to withdraw from the jury that portion of the evidence which relates to the conduct of the negro before the crowd on Monday.]

Williams called for plaintiff.—Was in Brownsville on Monday. Saw plaintiff before the legal court, and the conduct of Shepherd spoken of by other witnesses. Witness was called two hours afterwards before the crowd in the court house (reorganized as he supposed as a court) to give evidence.—Said to court that he had never given evidence, without first being sworn.—Was told that the court was self constituted, and required statements without oath, and that the court had adopted rules of its own. Witness lives in Fayette county, and corroborated Caldwell's evidence as to plaintiff's store. A motion was put to the crowd to admit Shepherd's negro as a witness. Motion overruled by a majority of seven votes. Court house was crowded. Question as to negro's evidence was decided by the holding up of hands.

Cross examined.—Called by the crowd or court as a witness for plaintiff. Plaintiff's store consisted of a general assortment of merchandise. Plaintiff was carried to Brownsville by some of the citizens of Fayette, in consequence of a reward offered for him.

Question by a Juror.—There was great confusion in the Court House.

Question by Mr. Fletcher.—A vote was put on Monday to hang plaintiff, and witness thinks there was a majority for hanging, but one of the crowd interfered to put off the trial until Saturday.

Question by a Juror.—Motion to hand was put to a committee, not to crowd. Plaintiff was so much frightened as to refuse to go to jail, unless accompanied by a friend.

[This witness, the reporter would remark, exhibited some little confusion in his narrative, probably, from his ignorance of the terms in which the questions were proposed.]

Mr. Hess recalled.—William Maclin interfered between Shepherd and plaintiff, when the former collared him with

drawn pistol in hand Robert Maclin with Jones, inflicted the stripes. Was in the court house on Saturday as well as on Monday. Thinks he saw Oldham on the bench.

Plaintiff's counsel here wrested. N. Potter called for the defence.—Is acquainted with plaintiff. In 1835 had a store-boat at Randolph, where witness resides. Moved his effects to Fayette county same year, where plaintiff and one Johnson kept a small store. Store closed the last of August 1835. Witness is a Justice of Tipton county, and in July 1835, granted certain attachments against plaintiff's property, on the ground (alleged by the applicants that he had absconded. Plaintiff had some live stock near Randolph. Plaintiff was absent from the country in July. Witness met him in August, when plaintiff enquired why the attachments were granted. Witness replied that it was said he had fled to the country, on a charge of passing counterfeit money.—Plaintiff contradicted the charge. [The witness was here stopped by plaintiff's counsel from answering to questions touching the excitement in the country in 1835, and the general character of the plaintiff.]

The objection raised as to the pertinency of the evidence proposed by defendant's counsel, having been discussed at considerable length by consent on both sides, the court entertained the objection, and directed witness not to answer.]

Cross Examined. Understood plaintiff to say, when with him in August, 1835, that he would prove their want of authority to sue out the attachments.—Saw dissolution of Johnson and Moody advertised in October. Thinks the attachments were not the same spoken of by Mr. Hess.

Mr. Core, a witness who was absent in the morning, was here called for plaintiff, by permission of the court, and corroborated the facts stated by Sevier and Skillarn, as to the trial and punishment of plaintiff.

Question by a Juror. The punishment inflicted after night, because the trial was not concluded until dark.

Cross examined. Did not see Oldham on the bench. Plaintiff told Shepherd in witness' presence that he wished him to inflict the punishment. Shepherd refused.

Robert Davis, called for the defence. Was in Brownsville when plaintiff was brought in, and also on Monday. Excitement was very high against him. It was proposed to select a jury of the best men in Haywood county to sit on plaintiff's trial. Trial put off until Saturday to bring in Plaintiff's evidence. Thinks the postponement was at the plaintiff's request. From the excitement, witness believed that plaintiff would be hung, without trial and that those who proposed organizing a court were opposed to hanging.

Cross examined. Knows several of the defendants now, but cannot say that any of them took part in the proceedings.

Mr. Sevier, recalled by Mr. Fletcher.—Did not see Dr. Oldham on the bench.

[A large number of depositions were here offered by defendant's counsel but under the decision of the court, the great mass of evidence contained therein, relating to the character of the plaintiff; the excitement on the subject of abolitionism and slave stealing which then pervaded the South West, and the high standing and general good character of the defendants was suppressed. The following were excepted and read to the Jury.]

Mr. Bowers, the Jailer of Haywood county deposed that plaintiff, requested him on Monday to admit him to Jail as a favor. D. Hay deposed, that two thirds of the citizens of the county were present at the time. J. W. Strother, deposed that it was the settled purpose of a majority of the people not to let Moody escape without punishment. William L. Miller deposed that the trial was conducted with great deliberation. Plaintiff's witnesses were sent for. Dependent knows of one witness who resided forty five miles from Brownsville.—Members of the Court men of deliberation, age, and moderation. [Depositions were also read alleging that Dr. Oldham and Mr Owens were only spectators at the trial.] Defendants here rested.