

SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

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

VOLUME I—NUMBER 49

TERMS—\$2 IN ADVANCE.]

ASHBOROUGH, N. C. SATURDAY, DECEMBER 9, 1837.

[OF \$3 AFTER 3 MONTHS]

SOUTHERN CITIZEN,
By B. Swain
Every Saturday Morning.

TERMS.

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LEGAL DEPARTMENT

IGNORANCE OF THE LAW EXCUSES NO MAN.

ASHBOROUGH, N. C.

Saturday, Dec. 9, 1837.

WIDOWS.

Our friend and Subscriber who made enquiries some weeks, perhaps months ago, respecting widows, and was not fully answered, will please to excuse the delay, as it was necessary to take some time for research, and we have been obliged to go from home on business in the mean time. In addition to what we said at the time of the enquiry, we now publish the following clauses of acts, as the only ones we can find on the subject:

"Where any widow may enter dissent from her husband's will, within six months after the probate of such will, or within six months after probate of such will, file her petition in the court where the probate of such will was made, and shall recover, out of the estate of her husband, one year's provision, in the same manner that she would have done, if her husband had died intestate; which year's provision shall be paid by the executor or administrator, in preference to all other claims out of the assets.

"In all cases where a widow shall file her petition for one year's provisions out of her deceased husband's estate, the costs of such petition shall be paid by the executor or administrator out of the assets of the testate or intestate: *Provided always*, That if there should be a deficiency of assets to pay the year's provisions and costs of petition, then the petitioner shall pay the costs."—1827, chap. 18; 1835, chap. 10, sec. 2-3.

From the Rutherfordton Gazette.

BURKE SUPERIOR COURT.

We attended the Superior Court of Burke last week. There was no case of sufficient importance tried, to interest our readers, except the case of State vs. John Duncan, who stood charged of the murder of William Jimmerson. Duncan had been confined in Jail since last April; the case was taken up on Thursday morning, when the Prisoner was brought to the bar, a general rush was made to get in the Court House, and it was soon crowded to overflowing. They then proceeded to form a Jury, but so many persons having formed, and expressed an opinion that it took some time to get a Jury. The case was then opened by the Solicitor, and they proceeded with the testimony. There were a great many witnesses introduced, and their evidence was very contradictory, so that we could not, if we were so inclined, give a detailed statement of it: we will therefore proceed to give the substance, as well as we can recollect: first, what was proven on the part of the Prisoner. The State proved that the Prisoner had married the sister of the dec'd., that on Sunday, the 9th of April last, the Prisoner went to a Sunday School—called the Teacher out, and asked him if some of his family were not

there, and on being informed that two of his daughters, Caroline and Rachel were there, he demanded them of the Teacher, they were sent out to him, he ordered them home, and told them if they did not go instantly, he would cut their hides till they might be tracked by the blood; holding in his hand a split or shaved piece of wood which he brought with him. Rachel expressed some unwillingness to go; but they both started with their father; the dec'd., a young man 18 years of age, followed them, and several other young men started just after him: they had not proceeded far before the Prisoner commenced whipping his daughter, Rachel, who was a weak girl both in body and mind; he whipped her repeatedly on the road; after going a mile and a half, they came into the Prisoner's enclosure, and near a still house, he ordered the girls to go into it, they refused, saying they did not like to go in there with their clothes, (meaning their fine clothes,) while he was attempting to open the door, they broke to run but Rachel being lame, was soon caught by her father, who again commenced beating her with the split, and knocked her down, she uttered loud and repeated cries; she rose to her feet when he again knocked her down with his fist, and she ceased to hallow. The deceased who had before entered the enclosure, then came up towards the Prisoner, and after getting within a short distance, 7 or 8 steps of him, he, the prisoner, turned and threw at the deceased who dodged and the dust was seen to rise beyond him.—The Prisoner then closed on him, and made several thrusts, the dec'd. broke and ran some distance, met his brother gave him his hand, and exclaimed "Duncan has stabbed me, I am dead!" he fell to the ground and expired in a few minutes. On examination, it was discovered, that the dec'd. was stabbed in the breast and also in the thigh. This was the evidence of the brother of the dec'd., and several other witnesses. It was also proven that the Prisoner had threatened the winter before to kill the deceased, and the morning before the fatal affair occurred, he said that he was going to the school house after his children, and if their protector interfered, he would kill him. When the Prisoner was arrested two large knives were found in his possession, one having the appearance of blood on it; and that he afterwards admitted, he had stabbed the dec'd.

But much of this evidence was contradicted by the Prisoner, who proved that on the evening before the homicide was committed, his wife and daughter had left his house; that night the deceased staid with him and they were friendly; next morning one of the daughters returned home, the deceased asked her if she was going to the Sunday School, she told him that she had understood her father was opposed to it. The dec'd. advised her to go, saying he had never seen Duncan whip any of his children except a son, and that before he would see them abused he would kill or be killed. That when the prisoner started from the school house, he was followed by the dec'd. and others—he ordered them repeatedly to go back; he at one time raised a stone on the deceased, who replied that he could use stones too, and picked up one; the deceased still followed, drew off his coat and hat, and pursued with rocks in his hands, that when Duncan entered his own enclosure, he ordered the deceased to keep out, who went round the fence and at the time Rachel was knocked down, came up with rocks in his hands, threw twice, hitting the Prisoner once, (as one witness said on the head, another on the shoulder,) when they advanced on each other, one of the witnesses said the deceased struck the Prisoner. They further stated, that they saw no knives; this was the evidence of the two daughters of the Prisoner, and a man by the name of Jimmerson, the Uncle of the deceased. It is proper to state, however, that but two of these witnesses saw the transaction, and they had previously given a different account of it, from what they swore.

We have now given the substance of the evidence; we have not attempted to give the minutia. The evidence was not closed until after night, when the Court adjourned over till morning; they met at nine o'clock, and commenced the argument. It was argued by Solicitor Guinn, & Mr. Carson for the State and Gaither and Caldwell for the Prisoner. The argument was not closed till evening. The Judge then delivered a charge, in which he drew all the distinctions between Murder and Manslaughter in such a manner as to be perfectly understood by the Jury. The Jury retired and soon returned a verdict, finding the Prisoner guilty of Manslaughter. Sentence had not been announced when we left. The evidence was very contradictory. The case turned on the credibility of witnesses. It is not for us to say whether the Jury found correctly or not.

A regular John Bull.—One morning when his late Majesty's ship Hesperus lay at the cape, a seaman named Wolf applied to Lieutenant Strangways for leave to go on shore. "No, Wolfe," said Strangways, "I cannot allow you to go on shore. You know the last time you got leave, you came on board drunk; and such conduct cannot be permitted."

"I promise you, sir, I won't get drunk," said Wolf.

"What do you want to do ashore?" inquired Strangways.

"I want to fight."

"To fight!" repeated Strangways: "a pretty errand truly. And with whom, pray, do you mean to fight?"

"With black Samby, the prize-fighter, Sir. He challenged me to a match before I joined the ship, and has been taunting me ever since insinuating that I am afraid to land to my bargain. This is the morning on which we were to meet, sir, and if I do not attend, they will call me coward."

"It is extremely foolish in you to enter into any such engagement, sir," replied Strangways; "but what you say is true: if you do not attend, those Cape Town Buzes may impute it to cowardice.—You promise me you won't get drunk?"

"I promise, sir."

"Then you may go."
Wolf accordingly went on shore, and after an absence of about an hour and a half, he returned without having tasted a drop of liquor. As soon as he got on deck he went to Strangways and reported himself.

"I am come on board, sir, sober."

"Well," replied Strangways, "I am glad you have kept your word. Did you fight the match?"

"I did, sir."

"Was it a long one?"

"Fifty minutes, sir, by a watch."

"Who conquered?"

"I did, sir."

"Did you punch your opponent severely?"

"Why, sir, I beat him, and that's just saying enough."

"Right! You may retire, sir."

"I hope, sir, you will have no objection to let me go ashore again," said Wolf, still lingering in the neighborhood of the Lieutenant.

"What! at present?"—"Yes, sir."

"Why what do you want to do ashore now?"—"Get drunk, sir," replied Wolf, with the gravest possible expression of countenance; while Strangways burst into an immoderate fit of laughter.—"May I go, sir?" continued Wolf, when he thought the Lieutenant had sufficient time to indulge his merriment.

"It is contrary to all rule," said Strangways scarcely able to articulate for laughter; "but since you have kept your promise so faithfully, I will permit you for this once to go." "Thank you, sir," said Wolf, with the same immovable gravity of countenance, and in a few minutes was seen pulling off in one of the Malay boats which attended the ship with fruit. He kept his word as faithfully on this as on the former occasion, and towards evening he was carried on board in a state of the "most blissful oblivion."

Theodore Hood's new novel of 'Gentleman Jack; or 'Jack Brag.'

Gen. Hayne was unanimously re-elected President, and Col. Edwards Treasurer.

By the report of the Treasurer it appeared that the amount received from South Carolina subscriptions was \$224,818 35 cts.; from the North Carolina subscriptions \$6,620; from the Tennessee subscriptions \$18,065, and from the Kentucky subscriptions \$13,920.—Total, \$263,423 36 cts.; Expended \$64,567 75 cts.—Balance on hand \$198,855 36 cts. The foregoing statement does not include \$1,735 of the South Carolina subscription, yet in the hands of the commissioners, nor \$1,500 the Ohio or Cincinnati subscription, which may have to be returned, as Ohio is no longer a partner in the great enterprise.—The expenditure in the several States has been as follows; viz: South Carolina, 48,149 79 cents; North Carolina \$2,405; Tennessee \$8,074 28 cents; Kentucky \$7,000. South Carolina has subscribed upwards of \$4,500,000; North Carolina upwards of \$130,000; Tennessee upwards of \$360,000; Kentucky nearly \$290,000, and Ohio \$30,000.

The President is to receive a salary of \$6,000 per annum, but Gen. Hayne has generously declined to receive more than \$4,000 and his travelling expenses, during the ensuing year, in consideration of the monied embarrassments of the times. He of course refuses any compensation for the past year. The Treasurer's salary is fixed at \$2,000 per annum. The Engineer department is re-organized, Major McNeill at its head, with a salary of \$8,000 per annum, and \$2,000 for his travelling expenses.—There are to be under him 4 Brigades of engineers, each composed of a chief, a surveyor, a draughtsman and a leveller, with the necessary operatives. Mr. Chesborough, is head of the Western Brigades with a salary of \$3,000, and Mr. Drayton of one of the S. Carolina Brigades, with a salary of 2,500 per annum. Mr. Colcock is selected by the Chief Engineer as his assistant, with a salary of \$2,500 per annum. Capt. Williams, the highly esteemed, skillful and scientific associate Engineer, is to continue on duty until the end of the year, and to receive \$6,000 for his past and future services, and then to terminate his connection with the Company, its finances not admitting of the continued and simultaneous employment of two such eminent Engineers as Maj. McNeill and himself.

Gen. Hamilton, Col. Blanding, Mitchell King, Esq. and Ker Boyce, Esq. have been appointed a committee of the Board of Directors, to negotiate with the South Carolina Canal and R. R. Company for the purchase of the Charleston and Hamburg Rail Road; the Committee was to have met in Charleston on Monday last.

Knockville, the valley of the Franch Broad, the Butt Mountain Gap, and a point a or near Columbia, are definitely fixed on as the route of the road. In case the Charleston and Hamburg road is purchased, a branch is to be immediately extended to Columbia, to be continued link by link, through the centre of the State towards the Mountains, and as far as the means may permit. If that purchase is not made, the Road is to be begun at Charleston.

An earnest appeal is to be made to the Legislatures of Tennessee and Kentucky for their concurrence in the Bill

granting Banking privileges, and for liberal subscriptions on the part of these states, and a similar appeal to North Carolina for pecuniary aid.

To give the greatest possible effect to the appeal the President of the company was appointed a commissioner to the Legislature of Tennessee and Kentucky, to ask in behalf of the Company the assistance required. We learn that the surveys have been of the most satisfactory character, and the result of the whole proceedings has been to inspire fresh confidence in the enterprise. No instalment on the Stock will be called for at this time. The Directors adjourned to meet in Columbia on the 1st Monday of December next, and the annual meeting of the Stockholders will take place at Ashville in October. A special meeting of Directors was also resolved on at Lexington in September next.

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