

SOUTHERN CITIZEN.

BY BENJAMIN SWAIN.

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

VOLUME I—NUMBER 51

TERMS—\$2 IN ADVANCE.

ASHBOROUGH, N. C. SATURDAY, DECEMBER 23, 1837.

[OF \$3 AFTER 3 MONTHS.]

SOUTHERN CITIZEN,
By B. Swain
Every Saturday Morning.

TERMS.

Two Dollars per annum in advance; or Three Dollars, if not paid within three months from the date of the 1st No. received.
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LEGAL DEPARTMENT

IGNORANCE OF THE LAW EXCUSSES NO MAN.

ASHBOROUGH, N. C.

Saturday, Dec. 23, 1837.

COSTS.

(Question by a Subscriber.)

Suppose three persons—A, B and C, have a suit in Court, and lose it—are they severally bound for the court charges? and if A and B should leave court before the Sheriff collects the cost, and afterwards runaway—Is C bound for the whole?

ANSWER.

C is bound for the whole. Three or more persons composing one party, either plaintiff or defendant, are bound for the cost both jointly and severally. And if one of the number has had witnesses summoned for himself only, the others ought to show the fact to the Court at the time the cause is tried; and then the Court will order such witnesses to be paid by him who had them summoned. Otherwise, the Execution will come out against all the persons composing the party.

CONSTABLE'S LEVY.

(Question by a Subscriber.)

Is a levy of any force, where there is no article mentioned in the endorsement of the levy on the Execution?

ANSWER.

The Levy of an execution may be a mere act of the mind; and the endorsement on the Execution is no part of the levy; but only the highest and best evidence of it. The officer may endorse the levy after it is made, as well as at the time, so he does it before the return of the Execution. It is however much the better way, for the officer to enter down the levy, stating all the articles levied on, at the time when he makes it, and date it correctly—as this generally prevents disputes, and saves him of imputations of fraud.

(Question by a Subscriber.)

A Constable had two *fi-fas* handed to him at the same time—one in favor of A, and the other in favor of B. Both were handed him by A, with orders to make the money. The officer levies on property, say a mare and colt. B takes him, and shows another horse, on which he also levies; and advertises the Sale. The officer falls sick before the day of sale, and cannot attend. Another sale advertised—officer still unable to attend. B goes the day before this last pointed to sell, takes his *fi-fa* out of the hands of the Constable, carries it to the Sale, and makes another officer sell property under it.—Now, is B entitled to have the proceeds applied to his debt exclusively, or is he to come in equally with A in the application of the

money? Or lastly, does B lose his lien altogether, by taking his process out of the hands of the officer who had commenced acting under it?

ANSWER.

B, by taking his process out of the hands of the officer, lost his lien on the property. And is therefore entitled to nothing. The officer may recover the proceeds and apply them to A's *fi-fa*. He who begins Execution must complete it. Hence if you take a *fi-fa* out of the hands of the officer who had levied under it, you lose the benefit of the levy; and by the same act, the officer is released from all responsibility. We think however in this case, it would be right for the officer to affirm the sale, and assent to it as his own act, and take back B's *fi-fa*.—then he might apply the money to both papers in suitable proportion. But even this cannot be done without the consent of A. The question, whether a Constable can, under any circumstances make an agent to sell, after he himself has levied, does not arise, for it seems there was no agency intended or thought of by the officer who sold the property. He pretended to act by virtue of his office.

(Question by a Subscriber.)

Can an officer, holding several *fi-fas*, levy one without another?

ANSWER.

Most unquestionably he can. But in doing so, he lays himself liable to all the plaintiffs that he has thus kept back.

WILLS.

(Question by a Subscriber.)

A testator bequeaths landed estate. Appoints B and C his Executors. B, one of the Executors named in the Will, writes the will, becomes the only subscribing witness, and proves the Will in Court. But has never relinquished his right to the Executorship. C qualified as Executor.—Is this a legal Will?

ANSWER.

It is not. There is no sort of legality about it. B has a right to come in as Executor at any time. And while he is thus privileged, he cannot become a witness to prove the Will. But besides this informality, the Will has another fatal defect: a Will of Lands must have two subscribing witnesses.

GUARDIANS.

(Question by a Subscriber.)

Is a Guardian bound to receive S. Carolina money? or can he refuse any money that is not at par, although it be current in the country?

ANSWER.

A Guardian is, in this respect, precisely in the same situation of any other person. Nothing but gold or silver is a lawful tender in any case. But the creditor, whether Guardian or not, must notify the officer before the money is collected, not to take any thing but *par money*. If he fails to do this, and the officer should collect his money in current Bank Notes—he, plaintiff, is then bound to receive the debt from the officer in such money as he collected from the defendant.

BEAUTIES OF LAW.

John Jones is indicted for stealing a couple of live ducks. It is proved in evidence that the ducks were dead when stolen. Judge—"Gentlemen of the jury, you must acquit the prisoner. Ducks are ducks, but a dead duck is not a live duck; nor a live duck a dead duck—law is law! Prisoner is acquitted accordingly. George Johnson is capitally indicted for the willful murder of Jane, his wife, under circumstances of the most atrocious and horrid character. The guilt of the prisoner is as clear as the sun at noon-day. The doom of the wretched man seems about to be sealed; but let

up start the counsel for the prisoner; he objects to the indictment, and why? The Christian name of the prisoner *Jane* instead of *George*, and although there is not the shadow of a doubt as to the identity of the man, or his participation in the crime of murder, he is freed from his fetters, and let loose among society at large. Go to! verily, verily, fiction is but a fool to the truth.

London Paper.

If the law has those defects, which are ironically termed "beauties," in the above extract, it is entitled to much respect for its preciseness and particularity, and for the ingenuity of some of its followers, who unfortunately often "make the worse appear the better" cause. A late trial at Birmingham, we believe (Eng.) which involved the character and fortune of a most worthy family, the acuteness of the counsel for the defence saved both, restored peace of mind to the injured, and laid the foundation for his own personal success. Suborned witnesses (three in number) swore to the execution of a fraudulent deed by the defendant, to the place it was executed, and not only to the day of the month but to the very day of the week on which it was executed. All the witnesses agreed on the day of the month, and each of them brought plausible corroborative incidents to prove the day of the week, although the transaction had taken place eight years ago. The fraud was clearly proved, as the spectators, judge, and jury thought, and the defendant was mentally execrated by most of those present as an abandoned and unprincipled wretch. Had his lawyer also deserted and condemned him? Far from it! While the three miscreants were perjuring themselves, this worthy advocate was practising his arithmetical and chronological acquirements, and the result was, that the day of the month the witnesses swore to was not Tuesday, but Saturday. When he stated this fact to the court, an almanack for the year in question was procured from an adjoining bookseller's shop; this proved the correctness of the advocate's calculations, and the consequence was, that one of the witnesses confessed his guilt, and exposed the wickedness of the case conspiracy!

As some of our young lawyers may have forgotten the process by which their brother of the Robe in England achieved this victory over injustice and perjury, we will refresh their memory by stating it. It may be found in many of our common school books.

Example.—On the 4th of March, 1829, Andrew Jackson was inaugurated President of the United States; on what day of the week did this national calamity happen?

Rule.—To the given year add its fourth part, (rejecting remainders,) to the sum add the number of days from the 1st day of the year, (the 1st day and the required day included,) from the last sun subtract 14, (during the 19th century) and divide the remainder by 7. The remainder after this division, will indicate the day of the week, counting Sunday 1, Monday 2, &c.

1829	1829
add 1	457
	2286
From 1st Jan to	
4th March	63 days, both days included.
	2349
subtract	14
	2335

333—the remainder, which is the index of the 4th day of the week—Wednesday—the day of inauguration.

There are other methods, but this appears to be the shortest and most easily remembered.—*Newbern Spectator.*

Deacon Slow.—Deacon Slow had three sons (it is unnecessary to mention his daughters) who were, as deacons' sons are apt to be, the deuce only an ill why, verily, verily. They were in the habit of playing a kind of game which he often manifested an inclination to play off upon the Deacon as he rambled down to see the flock—for these were duties to which he paid strict attention, as he was extremely humane except when he was made very wroth,

on which occasion his anger would burn like a furnace seven times heated. Now the Deacon's sheep pasture was on the Shawnee river, which is narrow but deep, and the pasture terminates in a precipice which rose fifteen feet above the water and shelved over it, as a beetle browed house hangs over a narrow street, and the boys, who had exhausted all other fun upon the ram, were in the habit, now and then, of squatting on the edge of the precipice, and darting a hat at him, at which he would come with blind fury there. The boy who held the hat could easily leap aside, and the exasperated ram was quickly cooled by a plunge headlong down the precipice into the stream. At this trick they were one day caught by the Deacon their father, who took them into a thicket close by and pointed their backs thoroughly with the bark of birch—an excellent application in such cases made and provided. It is not always effectual however, and in this case a disease was not cured, as the boys were a few days after waiting round the place in order to repeat the joke on the unsuspecting and innocent ram; but on beholding their father at a distance, coming with his basket of salt, they hid in the thicket which they had so good occasion to remember. Slowly came deacon Solomon now, and after he scattered his salt, he stood upright and thought within himself, that it would be amusing to see the ram bolt over the precipice into the river. He saw no one nigh—how should he, when the boys were hid in the bushes and taking off his broad brimmed hat, he made demonstrations which at once attracted the notice of the lord of the flock, who set out as usual in full speed. The deacon had squatted close to the edge—and, as he saw the ram bounding along, he pictured out to his fancy the ridiculous figure the silly sheep would make, bounding with a splash into the water—he began to smile—the ram at last came close, fierce on the charge, more enraged as the hat was larger than common—the deacon grinned outright, but in the midst of his delight at the ram's ridiculous appearance—he forgot to jump aside, and the beast butted him over with a splash into that water where he intended the silly sheep should have gone. The boys ran out clapping their hands and shouting "you've got it, dad," in all the ecstasy of revenge. He was afterwards called Deacon Solomon by his neighbours among whom he lived and died at a venerable old age.

A poor man once excused his non-attendance at church to a rich neighbor, by saying he had no breeches fit for the occasion, when the latter offered to lend him a pair. The man availed himself of the offer, and when the Priest was about to commence prayer he cast a glance to his friend, when he called out in an under tone, but loud enough to be heard by those around, "Don't kneel down in my breeches!" The man carried home the borrowed garment, and was a long time absent from church as usual, when another neighbor inquired the reason, which the poor man gave as before, adding that he once borrowed a pair which had given the owner occasion to insult his poverty before the whole audience—"Come with me," said his new friend, "and I will supply you." Accordingly he essayed once more to visit the church in borrowed breeches; and when notice was given for prayer he directed his attention to his accommodating friend, who no sooner saw him, than he called out loud enough to attract the observation of all present, "Kneel down, kneel down any where, in my breeches!"

A lawyer charged a poor man three dollars for advice. There's the money, said his client, 'it's all the money I have in the world and my family has been a long time without pork.' 'Thank God,' replied the lawyer, 'my wife has never known the want of pork since we were married.' 'Nor ever will,'

rejoined the countryman, 'so long as she has so great a nose as you.'

At a late celebration of the old bachelors at Bloomington, Indiana, the following villainous toast was drank:

"The Fair—Saints in the churches—angels in the ball room—and the devil in the kitchen."

What is Flaxing? I can just tell you all what it is—it is when a young man goes up to a young gal—'Miss will you take my arm? I thank you sir. I have an arm of my own sir!—That is the true meaning of Flaxing. X.

To keep out of jail—kill nobody, rob nobody, slander nobody, assault nobody, get in debt to nobody, ar mind your own business.

LETTER FROM PATRICK AUNT IN IRELAND.

Dear Nephew.—I have not written to you since my last before now, because as well as we have moved from our former place of living, and I now will please take up my pen to inform you of the melancholy news of the death of your only living uncle Kirpatrick, who died very suddenly last week, after a lingering illness of five months. The poor man was in violent convulsions the whole time of his sickness lying quiet and speechless, all the while, calling for water. I had no opportunity of informing you of his death sooner, except I had wrote by last post, which went off two days before he died, and then you would have postage to pay. I am at a loss to tell what his death was occasioned by, but I fear it was occasioned by his last sickness, for he was never well ten days together during the whole time of his confinement; and I believe, his sickness, was occasioned by eating too much of rabbits, I can't tell which, but be that as it will, as soon as he breathed his last, the doctors gave over all hopes of his recovery.

I need not tell you any thing about his age, for you know that Dec. next he would have been 25 years old, lacking 10 months, and had he lived till then he would have been just 6 months dead.—His property devolves to his next kin, who all died some time ago, so that I expect it will be very considerable; for he had a fine estate, which was sold to pay his debts, and the remainder lost on a horse race; but it was the opinion of every body at the same time that he would win the race, if the horse he ran against had not been two fast for him. I never saw a man, and the doctors all said so, that observed directions and took medicine better than he did. He said he had as lief drink gruel as wine, if it only had the same relish. But poor soul, he will never eat or drink more. And now you have not a single living relation in the world except my self and your two cousins who were killed in the late war. I can't dwell on this mournful subject, and shall seal my letter with black sealing wax and put on it your uncle's coat of arms. So I beg you not to break the seal when you open the letter; and don't open the letter till three or four days after you receive it by which time you will be prepared for these tidings. When you come to this place, stop, and do not read any more till my next.

Your affectionate aunt,
PEGGY OWEN.

P. S.—Don't write me again till you receive this.

LOUISVILLE, Nov. 16.
Steamer burnt.—We understand the Ceylon, which left this port on Tuesday last for New Orleans, was burnt on the night of the same day, about five miles below the mouth of Salt river, having proceeded only about thirty miles. The fire originated in the hold. The boat and cargo are totally lost. No lives lost.
An Express slip from the office of the Charleston Patriot of the 5th