

# WEST-CAROLINA RECORD.

THE STRONGEST BULWARK OF OUR COUNTRY—THE POPULAR HEART.

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**GAITHER & BYNUM,**  
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**Give him a Call.** 10-ly

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No. 91, A. F. M.  
Meets regularly on the 1st Monday night in each month, Tuesdays of Superior Courts, and on the Festivals of the Sts. John.  
G. M. WHITESIDE, W. M.  
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## WEST-CAROLINA RECORD.

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RUTHERFORDTON, N. C.

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Objectionable advertisements, such as will injure our readers, or the character of the paper, as a high-toned journal, will not be inserted.

Any further information will be given on application to the publishers.

### A Song for Forbearance.

JOAQUIN MILLER.

Is it worth while that we jostle a brother  
Bearing his load on the road of life?

Is it worth while that we jeer at each other  
In blackness of heart?—that we war to the knife?

God pity us all in our pitiful strife.  
God pity us all as we jostle each other;  
God pardon us all for the triumphs we feel

When a fellow goes down 'neath his load on the heather,  
Pierced to the heart: words are keener than steel,  
And mightier far for woe or for weal.

Were it not well, in this brief little journey  
On over the isthmus, down into the tide,  
We give him a fish instead of a serpent,  
Ere folding the hands to be and abide

Forever and aye in dust at his side?  
Look at the roses saluting each other;  
Look at the herds all at peace on the plain—

Man, and man only, makes war on his brother,  
And laughs in his heart at his peril and pain;  
Shamed by the beasts that go down on the plain.

Is it worth while that we battle to humble  
Some poor fellow soldier down into the dust?  
God pity us all! Time it soon will tumble  
All of us together, like leaves in a gust,  
Humbled indeed, down into the dust.

The man who carries a lantern on a dark night can have friends all around him, walking safely by the help of its rays and be not defrauded. So he who has the God-giving light of hope in his breast can help on many others in this world's darkness, not to his own loss, but to their precious gain.

When troubles come upon you, fly higher. And if they will strike you, fly still higher. And by and by you will rise so high in the spiritual life, that your affections will be set on the things so entirely above, that these troubles shall not be able to touch you. "Rise higher."

When God threatens, that's a time to repent; when he promises, that's a time to believe; when he commands, that's a time to obey.

**The Charge delivered by the Hon. Robert P. Dick, U. S. Judge for the Western District of North Carolina at the opening of the District Court, at Asheville, N. C., on Tuesday the 4th day of November, A. D., 1873.**

*Mr. Foreman, and Gentlemen of the Jury.*

The history of the world shows that the happiness, prosperity and material advancement of every nation depends in a great degree upon the just, impartial and speedy administration of its municipal laws. The laws constitute the basis and bounds of civil society, and are defined to be, "rules of civil conduct prescribed by the Supreme power of a State, commanding what is right, and prohibiting what is wrong." In this country such laws are enforced in courts of justice, by certain regular and uniform rules of procedure, recognized by the common law, defined by statute, and established by the course and practice of the Courts.

In all civilized States laws are founded upon the great principles of truth, morality and justice implanted in human nature by our Divine Creator; and are developed by the reason, wisdom and experience of mankind. Various systems of laws have prevailed among the different civilized nations; but the fundamental principles of such systems are in many respects similar, and in the progress of ages the ancient systems have exerted a beneficial and enlightening influence upon succeeding civil institutions, and altogether they form a grand system of jurisprudence, which furnishes instruction and guidance to the enlightened statesmen, legislators and judges of every land.

The English common law which is the immediate basis of the jurisprudence of all English speaking people came down from a remote antiquity and consists of customs, usages, rules and maxims concerning the powers and property of men; established, molded and developed into a system by the common sense and experience of the English people during the lapse of ages.

The principles of this law are not entirely embodied in statutes or a written code; but are to be found, principally, in the reports of judicial decision of actual controversies; in the immemorial course and practice of the Courts and in the treatises of learned and able jurists and commentators. The original principles of the common law were enlarged, extended or modified by the statutes of the British Parliament and by the decision of the English Judges at various periods so as to keep pace with the progress of civilization, and to meet the conveniences, wants and necessities of society, which were developed by the social intercourse, commercial advancement, and business transactions and relations of a free, enterprising, industrious and highly intelligent people.

Our American ancestors brought with them to this country the common law of England, and claimed it as a part of their birth-right as Englishmen, and they recognized and adopted such portions of it as were suited to their own condition and peculiar institutions; and the Statutes of the Parliament emanatory of the Declaration of Independence are considered by American jurists as a part of our common law. Since the Independence of our nation the common law in this country has been formed into different systems by changes and modifications made by Legislative enactments and Judicial decision in the several States. A large mass of the principles of the American common law is the same in all the States, and the decision of questions regulated by these general principles are the same in all the States and Nation-

al Courts. The State Courts are the forums in which most of the civil rights of the citizen are protected and enforced—and criminal offences at common law are tried and punished.

The Government of the United States derives its authority from the Constitution, and can only exercise the limited powers therein specified—and such are necessary and proper for the effectual discharge of its designated functions. Its Courts can only exercise such jurisdiction as is expressly conferred by the Constitution and the Acts of Congress in accordance therewith. The Constitution recognizes the existence of the Common Law and its obligation force, and the National Courts observe and enforce its principles in administering the civil rights of the citizen in all causes coming within their jurisdiction, where such principles are involved. In criminal matters the National Courts have no common law jurisdiction, and only hear, determine and punish such offenses as are designated by Statutes; and in such offenses their jurisdiction is exclusive, as no part of such jurisdiction can be delegated to, or exercised by a State tribunal. In exercising their criminal jurisdiction the National Courts are guided by the principles of the common law in administering such remedial justice.

We will now state some of the principles of the common Law, which are in full force in the National Courts, and applicable to cases which may come before you for consideration and action:

These Courts are bound as far as their jurisdiction extends, to observe, secure and enforce the rights of personal security—the rights of personal liberty, and the rights to acquire, enjoy and dispose of private property. The Constitution of the United States in carrying out the Ancient and well-settled principles of the common Law, expressly provides: "That the rights of the people to be secure in their person, houses, papers and effects unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." "A man's house is his castle," is an ancient maxim of the law recognized by all of our Courts, and no one has the right to enter a dwelling house without the permission of the owner, except under due process of law. To this general rule there are some exceptions founded upon the great public necessity for the speedy suppression and punishment of crime.

If a person has committed, or is about to commit a felony in his own house, any person may enter to arrest the felon, or to prevent the commission of such crime. If a felon takes refuge in a private house, any officer of the law, or other person may enter such house without a warrant to arrest such felon. But such action without a warrant can only be justified by showing conclusively that a felony had been, or was about to be committed. Where an officer acts under a warrant duly issued, and strictly follows the commands of such warrant, he is justified, even though the complaint proves to be unfounded.

There are other cases founded upon great and overruling public necessities, where a man's dwelling house may be entered, appropriated and destroyed for the public benefit, without any legal progress to which I need not further allude.

Such cases are regulated by well established maxims of law, which regards the general public safety and advantage as above private inconvenience and damage. With these exceptions a man's dwelling house cannot be entered against his will, or searched, except in the manner allowed and directed by law. Such warrants

are justly odious to a free people, and ought not to be issued or acted upon in any case, unless all the requirements of the law are strictly complied with. These requirements are as follows:

1. They can only be granted by law, and must not be issued, until oath or affirmation is made before such officer, showing that a crime has been committed, and that there is probable cause to believe that the offender or the property which was the subject or instrument of the crime is concealed in a certain specified house or place.

2. The warrant should particularly specify the place to be searched, and the object for which the search is made.

3. The warrants should not be directed to a private person, but to the proper officer of the law authorized to act in such cases.

4. The warrant must expressly command the officer to bring the property seized and the person in whose possession it was found, before the Magistrate that proper legal action may be had in the matter.

The manner of proceeding under the Internal Revenue laws in cases of seizure are expressly regulated by those laws.

Search warrants have long used to obtain evidence of crime against an individual in special cases where a person conceals that which is the subject of the crime and the public has an interest in it, or its destruction. These special cases are well understood and defined in the law. Thus search warrants are usually allowed to search for stolen goods smuggled goods, implements gaming and counterfeiting, for prohibited liquors kept for sale or use contrary to law, for obscene books or papers kept for sale or circulation, and they are used in other cases of a similar character.

It is certainly safe and prudent or legislators in passing laws upon such subjects, and for judicial officers in administering such laws, to regard all searches and seizures as unreasonable within the meaning of the constitution, which have hitherto been unknown to the law.

These stringent rules of the common law, and the Constitution of the United States, extended especially to the dwelling houses of the citizen, and are not so rigidly observed in searching premises not used as a dwelling house. Congress in the Internal Revenue laws has not authorized the officers of the Revenue to enter and search dwelling houses for excisable commodities by virtue of their official character, but in such cases they must resort to the remedy of search warrant issued as required by law. Such officers are, however, expressly authorized to enter in the day-time, without any process, the places where such commodities are manufactured or kept for sale. In the case of spirituous liquors, they may enter by day or night, and if admission is refused, after they have made known their official character and purpose, they may force an entrance, and all persons who refuse admission, or oppose such entrance are guilty of a violation of law, and may be indicted and punished.

This privilege of forcible entry and search is only allowed to Revenue officers as to distilleries and buildings and places used therewith, and any forcible entrance made as allowed by law, is justifiable even though a distiller is proceeding in his business according to law. The officers have an absolute right to demand and make entry in such places, which must not be withheld or denied.

If a Revenue officer suspects that spirituous liquors or Tobacco are being removed in a wagon or railroad car, or other conveyance, he must obtain a search warrant to examine such conveyance, and if he make search without such process, and does not discover some violation of law, he

may be liable to indictment, and civil action for doing so, in the State Courts. If he discovers a violation of law, his conduct is justifiable, and he may seize the wagon and its contents, and also the team used for drawing the same.

Where a person is liable to pay a tax or duty to the United States, and make a return of the same to the Collector under the Internal Revenue laws, he may be summoned by the Collector to produce his books and papers, and he may be examined upon oath as to his business connected with such tax liability; and his books and papers relating to such business, may also be inspected by the Collector.

This is a civil proceeding, and not a criminal prosecution, and the person summoned must answer, even though the testimony may tend to criminate himself. But the admission or disclosure thus made cannot be used against such party in criminal or quasi criminal prosecution.

If a person fail, or refuse to obey such summons, the power of the Collector is exhausted, and he must then apply to the Judge or some U. S. Commissioner of the district for process to compel such appearance and makes answers to the questions which may be propounded.

I have been informed that some difficulty has arisen in the district from the action of Revenue officers, claiming the right to examine the private papers of individuals; and official papers deposited in public offices.

Previous to the 1st day of October, 1872, a number of paper writings used in the ordinary business transactions of the country were subject to a specified stamp duty, and if any person failed to use the proper stamp on such papers when executed, they became subject to fines and penalties. This law has been repealed, except as to stamps on bank checks, drafts or orders, but it is expressly declared by such repealing acts, that all stamp duties, fines and penalties heretofore incurred, may be collected and enforced.

I am informed that the Collectors of Revenue are instructed by the Commissioner of Internal Revenue to proceed in all cases to collect from delinquents all proper stamp duties.

In obtaining information on such subjects, I am inclined to the opinion that he can only use such means as are furnished by the common law, by summoning witnesses to prove a crime. The right to summon a person to produce books and papers, only applies when such person is engaged in such a trade or business as is subject to taxes, and when it is the duty of such person to keep books and to make some return to the officers of the Revenue. Congress may have the right to vest this extraordinary power in the Revenue officers in the case of stamp duties on paper writings, but it has not done so. The making, signing, and using a paper writing without the proper stamp and with fraudulent intent subjecting the party to a fine and penalty, and also the paper is declared void. The issuing or using the paper is essential to constitute the offense and this fact may be known and proved by witnesses. The Act is penal and must be strictly construed. If a person make, sign and issue such unstamped paper a fraudulent intent is presumed by law, and the person charged must prove the contrary to the satisfaction of a jury. Such is my opinion of the law upon such subjects formed upon general principles, and upon a careful examination of the statutes and adjudged cases which I could find. If the District Attorney by reasons and authorities which he can produce, can convince me of my error, I will cheerfully yield my opinion and administer the law as I may then understand it. The Revenue officers certainly

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