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From the National Intelligencer.

Messrs. GALE & SEATON:—In the Southern Literary Messenger for April, 1842, is "An Essay on the Civil Law, by a Lawyer of North Carolina," which is creditable to the taste and learning of the author. But on page 251 of the work, I observe the following note on a certain passage in the essay by the editor:

"*Painé forte et dure.*—Unlucky recently amended, this dreadful judgment is to this day used by the laws of North Carolina. For, if we mistake not, the terrible sentence of *painé forte et dure* was inflicted by one of her Courts only a few years ago. When the prisoner was arraigned for trial he stood mute, and refused to plead either guilty or not guilty. Whereupon he was laid on his back upon the bare floor of the court house, great weights were placed upon his body, and in this condition he was fed with ditch water from a spoon till he died. We challenge the universal jurisprudence of modern Christendom to out-tolerate this. We call upon our correspondents, and every other friend to humanity, to use their influence in erasing from the statute book of the good old North State this disgraceful and barbarous practice."

Editor Southern Literary Messenger.

That an editor at the Capital of Virginia, distant not more than ten or twelve hours' travel from that of North Carolina, and with a copy of the Statutes of the latter State at least as near him as the Executive office in Richmond, should have ventured upon a statement so uncalculated for, and so unfounded, in a publication aspiring to a higher character for candor than the ordinary newspaper press—a statement, that which Hall, Trollope, Murray, & *id est omnes*, have put forth no alumnus on our country so ridiculously extravagant, is certainly a matter to be regretted by all the lovers of that literature to which the Messenger professes to be devoted. Had the editor deigned to consult the first volume of the Revised Statutes of North Carolina, which reduces into but little more than 600 pages the whole body of her public statute law which is now in force, from *Magna Charta* of Great Britain until the year 1837, he might at least have spared his appeal to the "friends of humanity" to use their influence in erasing a barbarous provision from her statute-book. He will there neither find the *peine forte et dure* of three centuries ago, nor any thing which even a barbarian could mistake for it. But, on the contrary, an express provision, that "if any person arraigned shall stand mute, of malice, or will not answer directly to the indictment, in every such case it shall and may be lawful for the Court to order the proper officer to enter a plea of *not guilty* on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same."

The readers of the Messenger who may chance to read this will judge whether the code of North Carolina is wanting in humanity, or the editor of the Messenger in accuracy of information on a subject which he volunteers to illustrate. This provision, it is true, was inserted in the Revision of 1836 for the first time. But it was not then inserted because the old doctrine of *peine forte et dure* had ever prevailed in the State. All such statutes and parts of the common law of Great Britain as had been theretofore in force and use in the colony, and as were not inconsistent with the new form of government, were adopted by act of the General Assembly in 1777. But there is no history or tradition of the existence of this barbarism, "in force or use," at any time in the colony, and it is manifestly inconsistent with certain declarations in the Bill of Rights, which forms a part of the Constitution, adopted in 1776. It therefore never had a foothold in her criminal law. And with an acquaintance somewhat familiar with the Reports of cases decided in her Courts, which reach back nearly to the period of the Revolution, and with a personal acquaintance with, I believe, every professional man in the State now living who has been at the bar for as much as five years, I have never read or heard of any incident in the proceedings of those Courts which could furnish even a suggestion for the tale of atrocity which is told with so much minuteness, and dwelt on with such holy horror by the editor of the Messenger, as having been realized "in one of the Courts of North Carolina only a few years ago;" a tale which, if true, would degrade a North Carolina Judge below the level of a Scraggs or a Jeffries, exhibit her unsurpassed system of enlightened jurisprudence as no better than that of our English ancestors in the worst times of feudal despotism, and her free and gallant people as not only passive spectators, but the ready and willing instruments of a most cruel and savage murder.

So sheer and baseless a fabrication is hardly to be found in the adventures of Munchausen. Yet the story is told with a precision of description which might almost indicate a personal attestation, and more in sorrow than in anger. The unlucky culprit having been "arraigned, stood mute; whereupon he was laid on his back upon the bare floor, great weights—great, and greater, than he could bear—were placed upon his body, and in this condition he was fed with ditch-water from a spoon till he died." This last idea of

the ditch-water is, I think, a refinement upon the old mode of torture, and I apprehend has no precedent in the year books. It was probably suggested to the writer by some of the incidents which history records as attending the death of the reformed Edward; and, as he was "nearly restrained by any facts in drawing his picture, it would have been more graphic had he adopted the mode of killing by which that ill-fated monarch came to an end. As it is, it is altogether doubtful whether the modern victim made his exit by the pressure of superincumbent weights, or, like Socrates, perished from drink; whereas there could have been no mistake in heated iron.

I am aware, Messrs. Editors, of a habitual disposition in certain quarters to disparage the character and institutions of North Carolina, and to affect those patronizing and ridiculous airs of superiority which many upstart foreigners have assumed towards our country in general. Whether the editor of the Southern Literary Messenger is to be included in this category I know not. If he be, there is some consolation in being able to perceive from this his first effort, (so far as I have known,) that, like those aforesaid foreigners, his attempt at disparagement is too destitute of truth to do much harm among persons of tolerable information. I will not challenge the universal jurisprudence of modern Christendom" to a comparison with that of my native state, lest, like the editor of the Messenger, I should be found arrogating an omniscience which indicated that I knew nothing of either. But I will venture to say to the intelligent reader of the Messenger, who may disport himself in "the gladsome light of jurisprudence," that in no State of this Union will he find a Constitution more redolent of genuine, rational, American freedom—a more liberal, well defined, just, and humane code of laws, and more benevolence, firmness, and general intellectual ability in their administration, than in the State of North Carolina.

I am, with high respect, your obedient servant,

WILL A. GRAHAM.  
Washington, May 2, 1842.

## TEMPERANCE.

### What Good will it do?

"What good will it do if I join the Cold Water Army?" said Henry, when he found every objection he could make was easily answered.

"What good will it do?" replied Uncle Edward, "sit down on the bank here, and I will tell you a story."

Henry threw his skates down beside his uncle, and listened to the following, about

### BLACK-EYED JOE.

Two or three years ago, I went into a town in the State of New Hampshire to give a temperance lecture. There were many persons in the village who drank intoxicating liquors. But many came to hear me, and I noticed just as I commenced speaking, a little bright-eyed boy just about your age, who came into the Hall, and sat down near the door. He listened very attentively; and when I spoke of the cruel treatment of wives and children from intemperate men, I say him more than once take his handkerchief and wipe away the tears. I told them the pledge would prevent all this, and make men kind and pleasant; and I told the children to sign it if they would prosper and be happy in the world. This little fellow was almost the first to put his name down; and when I asked the people who he was, they told me he was called *Black-eyed Joe*, and that his father was one of the worst drunkards in town.

It was his custom every morning to mingle rum and sugar with water, and pass it round to every one of the children, who took a little as well as their father and mother. He would drink again at 11 o'clock, at noon-time, and at 4 o'clock, and at supper. So that when evening came, he would always be intoxicated, cruel and revengeful—sometimes he would beat his wife, sometimes his children, or shut them out of doors in the cold storms. It was this that made Joseph weep, when I told of cruelty to children; and it was this that induced him to sign the pledge.

He went home from the meeting and determined to keep his resolution. The next morning as usual, the father took out the brown jug, mixed the pitcher of poison, and handed it to Joseph first. He shook his head and declined taking it.

"Drink, Joe!" said his father.

"I do not wish for any again, sir," replied Joseph.

His father looked at him sternly a moment, and then said roughly:

"Did you go to that temperance meeting, Joe?"

"Yes, sir," he replied.

"Did you sign the pledge?"

"Yes, sir."

"What did you do that for, Joe?"

"Because, father," said Joseph hesitatingly, "if I am ever a man, I do not want to be as you are."

His father flushed, turned pale, stood confused a moment, and then opened the door and dashed the jug and pitcher to pieces, saying,

"You shall have a father that you won't be ashamed to be like."

From that hour he has never taken any thing that can intoxicate; and is happy himself, and renders his family happy besides; and I will venture to say that Joseph will have an answer ready for any one who asks him, "what good will it do to sign the pledge?"

"Uncle Edward, you may put my name down," said Henry, "and I thank you for telling me that story."

So saying he put on his skates, and went off upon the ice, with a swift motion, to tell the story of Black-eyed Joe to his companions.

## SPEECH OF Hon. Wm. A. Graham, OF NORTH CAROLINA,

On the Loan Bill, delivered in the Senate of the United States, April 13, 1842.

MR. PRESIDENT: In the division of the labor of this body it has not fallen to my lot to have any especial charge of the finances and expenditures of the Government. But, being called upon to vote for an additional loan for the public service, I have felt myself constrained to examine whether it was demanded by necessity; and being now satisfied that such necessity exists, I must bespeak the patience of the Senate while I endeavor to show its existence, and the causes by which it has been produced.

For more than five years past the expenditures of this Government have exceeded, very far exceeded, its revenues. By an official document from the Treasury Department now before me, it is plainly demonstrated that, in four years, from the 1st of January, 1837, to the 1st of January, 1841, the expenditures were above one hundred and twelve millions of dollars, whilst, in the same time, the aggregate income from revenue was but eighty-four millions of dollars in round numbers, being an average annual expenditure of twenty-eight millions, with an annual revenue of but twenty-one millions of dollars. I omit the fractions of millions to simplify the statement. It thus appears that, during that space of time, expenditure exceeded revenue by twenty-eight millions of dollars. (See appendix.)

In the four years from the 4th of March, 1837, to the 4th of March, 1841, the precise period of Mr. Van Buren's Administration, the excess of expenditure over revenue is still more surprising. It amounted to more than thirty-one millions of dollars, being an average annual excess of expense over income of near eight millions per year—an expenditure greater in four years than would have been yielded from the average revenues in five years and a half.

Such having been the condition of our monetary affairs during the past Administration, the wonder is, not that we are compelled to borrow now, but how they avoided a greater debt heretofore. Having expended thirty-one millions of dollars beyond their income from revenue, that would naturally be expected to be the amount of debt which they left to their successors on the 4th of March, 1841. Instead of five and a half millions, which they admit. Such would have been the amount of debt left by them upon the country, had they, like other Administrations, had no other means to expend but such as they themselves raised. But, sir, it was their good fortune to inherit a full Treasury, in ready money, and to have falling into it, at convenient periods during their term, millions upon millions of capital stock, (not current revenues), which had been laid up by the Government from the contributions of the people in previous years. The surplus in the treasury was seventeen millions of dollars, nine of which had been directed to be transferred to the States, as the fourth instalment under the deposit act of 1836. Nine millions more were received by them from debts due to the United States, principally, almost wholly, for the sales of its stock in the late Bank of the United States, at \$115 per share. Adding these together, you have twenty-six millions of dollars of extraordinary means, over and above the revenue, expended by the late Administration. Yet, in addition to this, they borrowed five and half millions of dollars by the issue of Treasury notes, which were out standing at the end of their term, making in all more than thirty-one millions of extraordinary means. Recollect, too, that this was during a period when they had a tariff of duties, on all the principal articles yielding revenue, averaging forty per cent. Yet, sir, we who feel bound to vote for this loan are taunted by the adherents of the Administration by being told that we are running the nation in debt. This reproach, if deserved at all, would come with better grace from those who could show a better administration of the finances while in their charge. The distinguished and able Senator from Pennsylvania (Mr. Buchanan) proclaimed in this discussion the other day that a Whig Administration, in the short space of thirteen months, was, by this bill, about to consummate a public debt of seventeen millions of dollars, in addition to that of five and half millions of dollars, which he admits was contracted by their predecessors. Sir, this may be very criminal; but

take it without any of the palliation or apology to be found in the deficiency of the revenue, did the Senator and his friends do better when they had possession of the Government? The very first act of Congress, at the called session under Mr. Van Buren, was an act to borrow nine millions of dollars which had been given to the States by the bounty of Congress; (I say given, because, although in legal form it was but a deposit for custody, in substance and intention, at least on the part of many, it was a gift;) and in the act of Congress to which I refer, the transfer is merely postponed until the 1st of January, 1839, but a repeal of the gift is avoided. This was the first movement of Congress under that Administration, and the second is like unto it; that is, an act to borrow ten millions of dollars by the issue of Treasury notes. By deductions equally fair with those of the honorable Senator, it is shown that, not in thirteen months, but in seven months of exercising into power, the Administration of Mr. Van Buren borrowed nine millions of dollars. This was alleged at the time to be indispensably necessary, because of the indulgence given to merchants on duty bonds by an act of that session, and the failure of the deposit banks to pay the amounts due from them to Government; and that these measures were to be merely temporary until those means could be realized. But, although the merchants and the banks paid up what they owed, yet the fourth instalment was never paid to the States, of whom it was borrowed, and Treasury notes were kept afloat by issuing and redeeming again and again, leaving five and a half millions outstanding when that Administration closed.

[Mr. Woodbury would remark to the Senator that there was yet due \$100,000 or \$200,000 from the banks of Mississippi, and he believed \$80,000 from the Bank of the United States.]

Mr. Evans: No, the last has been paid. The Mississippi banks are all who have not paid.]

Mr. Graham resumed. That is trifling an amount to constitute the slightest apology for failing to pay the fourth instalment and redeem all the Treasury notes issued. It bears no proportion to the nine millions of the former, and the five and a half millions of the latter. It now distinctly appears that the States lost the fourth instalment which had been promised them, and a permanent debt of five and a half millions was fixed on the country, not by reason of the default of the "merchants and the banks," which, for some time, were represented as the sources of all the ills which be-fell the Government, but because her expenditures during the last Administration were raised to an annual average amount of twenty-eight millions of dollars per year. With a revenue admitted to be deficient by their very first acts of legislation, and which, by regulation of the compromise act of 1833, was to decline materially during their continuance in authority, a system of expense was pursued, which not only overran the yearly incomes and exhausted all the earnings of previous years, but superadded a national debt besides. A guardian who should thus manage the estate of his ward would find no just cause for wonder in his removal from office.

We are now told, however, that although the average rate of expenditure was large, the graduation was downward; and it has been repeatedly a matter of boast, that, in the last year of Mr. Van Buren, the whole amount expended was but twenty-two and a half millions of dollars. And it is vehemently contended, that the experience of that year shows that sum to be the amplest amount for annual expense; and, indeed, that it should fall below it. Sir, I hope it will be found to be enough for the yearly support of Government. If we can avoid war, I hope to see the annual expenses reduced to twenty millions. But a very casual examination of the legislation of 1839-'40 will show that the reason why no more than twenty-two and half millions was expended in the latter year was, that the Administration had no more to expend. The seventeen millions which they found in the Treasury were gone, the nine millions of debts which they had collected were gone, in addition to their current revenues; and a Presidential election being on hand, it was not deemed prudent at that moment to resort to the taxing power to raise new supplies. The perennial fountain of Treasury notes, it is true, was still kept open, but for sufficient reasons it was not expedient to swell the amount of those in the monthly published statements. What, then, was the wise measure of economy and retrenchment which was adopted to bring down expenses to income? Was an useless branch of service cut off? Were all the objects which yearly cost the Government money extinguished, and those struck off and discontinued which were not supposed to be worth what they would cost in taxes upon the people? No, sir. A new expedient was devised. Appropriations were made as usual in all branches of expenditure; Congress thereby declaring that the objects of appropriation were proper, and were still to receive the patronage of Government. But a proviso was

inserted in the appropriation bills, authorizing the President of the United States "to postpone the expenditures" in case of a deficiency of revenue; "such postponements, in each case, to be merely temporary, or until the close of the next session of Congress," manifestly implying that these subjects of appropriation, though suspended momentarily for the want of money, are, all, thereafter, to be resumed and finished.

If, by such resorts as these, the public expenditures were reduced in 1840 to twenty-two and a half millions of dollars, it furnishes surely no occasion for the authors of that reduction to boast of their economy, nor to accuse their successors of extravagance in completing the works which they had begun. In the military establishment, the expenditure was nearly a million less in 1840 than in 1839. Why? Because, under the authority of these provisions in the acts of Congress, the President could arrest the operations of the mechanic and laborer on the public works with his hammer or trowel in hand at midday, and whilst his contract was yet unexpired, though the walls of the barracks or quarters in which they labored were but half finished, with an assurance, however, that the works were not abandoned, but only suspended until Congress should provide additional means for carrying them on; meanwhile the Presidential election will be over. In like manner, seven or eight hundred thousand dollars are saved by suspending the works on fortifications, and leaving the half finished walls of your fortresses to wind and weather, until the Treasury should be replenished. Mr. President, this course of temporary reduction, to make a fair showing in the arithmetic of expenditure, so far from being economy was neglect of duty. Either the military establishment and the system of fortifications—the number of men in the army, and their barracks and quarters; the armories, arsenals, forts, &c.—should have been permanently lessened, or adequate revenues should have been provided to support and carry them on efficiently. The policy which was adopted necessarily exposed the public property to dissipation, expressly intended no permanent reduction in expense, and threw over upon the year 1841 many of the pecuniary burdens which properly belonged to 1840.

Mr. President, in tracing the causes of the enormous average expenditure of twenty-eight millions per year during the last Administration, I believe it will be found to have been chiefly owing to their having had a redundant Treasury, which they had not been obliged to provide for themselves—as the heir of fortune is generally a prodigal, while the son of industrious poverty, who must needs accumulate for himself, is economical from habit and necessity. In my humble opinion, the first and prolific source of that system of expenditure, as well as of many of the other evils under which the country now labors, was in withholding the fourth instalment from the States. It deprived the States of a boon which they had a just right to expect, under the provisions of the act of 1836—a boon which was held out to them as a sure resource for more than twelve months; upon the reasonable expectation of which, they had commenced public enterprises and incurred debts, and which, though taken from their grasp almost at the very moment when they were about to clutch it, was still suspended over their heads, like the bow of promise in the heavens, until the turbid and overflowing waters of public expenditure were raised high enough to absorb it. That many of the States would have become deeply embarrassed, independently of the action of this Government in this particular, I do not doubt; but that the embarrassments of many of them have been hastened and increased by the loss of the fourth instalment, I believe, is equally certain. To them, in their peculiar condition, it was every thing; to us, I fear, it has been worse than nothing. With it, the last Administration expended in their four years one hundred and eleven or one hundred and twelve millions of dollars. Without it, they would still have had one hundred and two, or one hundred and three millions, giving for average annual expenses near twenty-six millions per year—enough for all reasonable purposes—enough, the country will say, nay, has determined, for all the good that was accomplished.

By yielding this to the States, one of two results must have happened, either of which would have had a happy effect, in mitigating the severity of our present embarrassments—either a material reduction of expenditure, to correspond in some degree with the rate of income, or a timely provision of means for support, by reason of which the suddenness of our present difficulties would have been avoided. I listened on yesterday with much pleasure to many of the remarks of the Senator from South Carolina (Mr. Calhoun) on the dangers of allowing expenditure to exceed income, and the tendency of an overflowing Treasury to produce extravagance. And I could but regret, that those maxims, so true in themselves, had not been applied in 1837, and the 4th instal-

ment allowed to go to the States instead of being retained into the Treasury of this Government, thereby affording the means for extravagance.

[Mr. Calhoun said the Senator was not here, and of course could not know the reasons which had induced him to vote for withholding the 4th instalment from the States. He was opposed to collecting moneys for distribution, and was for distributing in the first instance only because there was a surplus on hand. When it was needed, he voted to restore it to the Treasury. But he had uniformly voted against extravagant appropriations.]

Mr. Graham said he had not been examining the votes of the Senator for purposes of censure, but was calling his attention, and that of the Senate, to what I conceive to have been an unfortunate mistake, in giving to the Government temporary means so far to exceed its regular income in its expenditures, and to carry them to a height, from which the present state of our finances would demand so abrupt and heavy a descent. As it is, a service now costing you twenty odd millions of dollars per year is suddenly let down upon means not exceeding thirteen and a half millions; and its weight is accumulated by a public debt of five and a half millions, left by the last Administration, bearing an annual interest of 330,000 dollars. To meet this deficiency what have we? Instead of surplus, we have debt; instead of extraordinary means falling in, we have a daily increasing charge of interest; instead of a tariff of 40 per cent, we have one nearly approaching 20 per cent, and that upon little more than half the imports. What then is to be done? If we propose to borrow money to defray the present expenses of Government, we are told that we are running the nation in debt. If we propose to levy duties to furnish a permanent revenue, we are taxing the people. If we suggest retrenchment, and cutting off such parts of the public service as are not most needed, we are told there is imminent danger of war, and that the most vigorous preparations for it should not be omitted. Mr. President, our whole duty in this emergency seems to me to be comprehended in three propositions:

1st. Borrow such sum, upon the best terms you can obtain, as will relieve your present necessities, and save the public honor from disgrace.

2d. Reduce your expenditures to the lowest point which is consistent with an efficient public service.

3d. Levy such duties upon imports as are necessary for an economical administration of the Government, and no more.

But, sir, our opponents have one panacea for all the difficulties of the times. Take back the proceeds of the lands, say they. A direct proposition to that effect was early introduced by the Senator from Missouri, (Mr. Linn.) And no matter what may be the particular subject under consideration, it is perpetually moved by way of amendment. Now, let me be in all candor, if they are resumed into the Treasury, of what avail are they? Last year the net proceeds but little exceeded a million of dollars, and it is exceedingly doubtful what they may be in years to come. To say nothing of the immense quantities in the hands of speculating companies, the very fact that large grants were made to the several new States, by the distribution act, embracing in the whole, I think, near two millions of acres, with the liberty of selecting choice qualities—grants already preferred because made by the statute itself, and incapable of repeal, whatever modern democracy may urge to the contrary—will make those States our competitors in the market, and, apart from the depression of moneyed affairs, must diminish the receipts from that source. But, suppose the annual proceeds to be three millions of dollars, the maximum that has been estimated here, what is this, compared with fourteen millions, the amount by which the Secretary of the Treasury informs us the current revenue of the year will be deficient? With or without the lands, therefore, the necessity for a loan is exigent and unavoidable.

But, Mr. President, were it otherwise, I would ponder long before I could consent to disappoint the just expectations of the States and the people in regard to these lands. No subject has been more discussed or better understood in this country for the last ten years, than that of the distribution of their proceeds among the States. None occupied a more prominent place in the Presidential canvass of 1840. None was more distinctly or boldly put forth as a leading article of his creed of policy, in his letters, speeches, and addresses to his fellow-citizens, by the illustrious man who was then called to preside over us. And whether we look to the results of elections, the proceedings of popular assemblies, or State Legislatures, no measure on which parties in our country have divided has, so far as I recollect, so many and such unequivocal evidences of public opinion in its favor.

Sir, to my mind it is clear that the Constitution of the United States does not contemplate the public lands as among the means for the ordinary support of