COMMUNICATION.

FOR THE REGISTER.

No. 2.

In my last communication, (which you published in your paper dated 10th Sept.) I promised to pursue the subject of my essay. The importance of the subject, will I trust, be an acceptable apology for my doing so—and my delay to comply with this promise, has been produced by constant engagements in other occupations.

I have heretofore pointed out a few of the inconveniences which result from the principle in our Law, that recognizes a distinction in the *dignity* of debts, due by the estate of an insolvent man. I could, with ease, multiply them, but I am not ambitious exclusively, to occupy your columns; and my purpose will be answered, if I can draw to the subject some attention from the Law-makers of the land, and their own experience and knowledge will supply my omissions. Allow me then now, to point out some of the other artificial rules on this subject and the consequences which flow from them.

If a man die, leaving property worth $5000 only, while he is indebted by bond to *A* for $5000 and by another bond to *B* for the like sum of $5000, and these two creditors sue the representative of the debtor, to the same Court, he *cannot* pay to each creditor one half of his demand—he cannot confess one half the *assets* to one and the remaining half to the other—he is *obliged* to admit he has assets to one for the *whole sum*, and plead this in bar to the other action.

That this is not equitable, is so nearly an axiom, I find it difficult to produce arguments to sustain it—as we should be puzzled to prove by *argument*, that two and two make four. But I can prove that this very *necessity*, this *right* to prefer one creditor over another of the same dignity, is the mother of unjust and fraudulent devices by the representatives of insolvent estates, whence it often occurs, that one-fourth of the estate goes to enrich the avaricious Executor to the loss of the fair creditors. In the case of the two creditors above stated, the Executor or Administrator has the right to *prefer* one and exclude the other entirely—nay more, he is *obliged* by the *law* to do it. Both creditors are aware of such right and necessity—and hence each one is anxious to procure the favour, and if it can be had on no better terms, *A* will offer to the Administrator that if he will give this preference to him, he will, after the judgment is had, accept in discharge of it, a *lesser sum*—(say $4000) for the $5000. The bargain is made—a Judgment is confessed to A—this judgment bars B entirely, and the Administrator or Executor pays off *A* with $4000, retaining for himself, the remainder of the assets. Now it cannot be pretended, but that A the creditor, may make this arrangement without the reproach of having acted dishonestly, for it is the only mode left him for securing any part of his debt. It is true that in the precise case stated, the two creditors might come to an understanding with each other, and divide the estate—yet let it be remembered that the case as stated is between *two* creditors for *illustration* only, for if there be a large number of creditors the opportunity to the Administrator for these unjust speculations is increased, and the chance for concert among creditors by which to defeat them is so remote, that we may set it down as impracticable.—Can the wisdom of our Legislature devise no plan by which to obviate such glaring injustice & stop a system of dishonest speculation, produced by the enticement and protection which the *law* itself holds out to *money making* men; or must we still preserve our devotion to these artificial rules, because they are old & long established? It is a consequence also which results from this right of the representative to prefer one creditor and exclude another, that the Administrator or Executor may retain in his hands, the *whole* of a debt, which may be due to himself.—while, an other creditor of the same *dignity* is to remain entirely unpaid. The law, at one time, so tenacious of a principle that shall class debtors according to their dignity,—here abandons this favorite doctrine and leaves creditors whom it has elevated to an equal rank, to acquire precedence by the price they bid to purchase the favor of the Administrator. And it very often happens, that the representative who is himself a creditor of *inferior* dignity, justifies to his conscience this speculation, by a persuasion that the *law* unjustly excludes him from payment before other creditors, and therefore he may rightfully evade its effect by *shaving* enough to secure himself. How seldom it happens that he stops at *securing* himself, let those who have had experience in the world judge!

Again. Our Law professes that the whole of a man's estate must be appropriated to the payment of his debts, before his heirs or next of kin shall be entitled to take any portion of it. None will question at this day, the justice of such a rule. At one period the LANDS of a deceased debtor were only liable in the hands of his *heirs*, where the *heirs by name*, were bound in the obligation held by the creditor. This rule, however, was many years ago exploded, and our Legislature passed a law, declaring that such lands should be liable to pay any honest debt. Yet the manner of proceeding against the lands, is such, that it may be easily evaded,—and in many cases, will prove illusory. Some of these defects I will proceed now also to point out.

That I may be understood, I will first state the general provisions of our law on this subject. A creditor who is desirous of procuring satisfaction of his demand, must sue the Administrator or Executor, and if on the trial of his suit, it is found by the verdict of the Jury, that such Administrator or Executor hath no assets, on motion to the court, a notice or *scire facias* may go to the heirs or devisees, to show cause, why the lands descended or devised, may not be sold to pay the debt; and after judgment on such notice, or *scire facias* against the heirs or devisees, the creditor sells any lands which he may suppose have so descended or been devised. Under the provisions of this law, two or three instances of injustice may occur, & it is a matter of some surprize that it has undergone no amendment. 1st. The same struggle for preference happens as in suits against the Administrator himself, and the same chance is afforded to bid for his favour. The creditor who first gets judgment against the heirs, is paid to the entire exclusion of all others—the *dignity* of the debt is here again forgotten. And the Administrator may here also, give a preference thus:—he may to the suit of one creditor, enter a plea which he knows to be false—to-wit: *payment*, or the like, which the plaintiff cannot admit to be true, and hence, his suit will be delayed until another term of the court,—while to the action of the *favored* creditor, he may plead only the want of *assets*, a plea which this creditor may admit to be true, and immediately proceed against the lands, & thereby acquire a preference, too often bought from the mean avarice of a speculator on the wants of others. Is this justice? Is it *policy*, that these inducements to speculate on the estates of dead men shall be preserved and perpetuated?

2. But this is not all, for under this law another inconvenience daily occurs. If the *heirs* or devisees of the deceased creditor be insolvent, *they* may effectually evade the application of the lands to the debt of their testator or ancestor, for I believe that it is now settled, that if the *heir* or *devisee* sell the lands before the creditor has procured his judgment, at all events before he has sued out his *scire facias*, such lands cease to be liable for the debt in the hands of a purchaser, and the creditor must take his judgment against the property of the *heir* or *devisee*, & so if the *heir* be insolvent the creditor loses his demand. Nor indeed, need he be *insolvent*—the process sued out against him, is only in form of a *notice*, and does not hold him to *bail*. If the heir or devisee be knave simply, the creditor may be defrauded by the removal of the heir and his effects without the limits of the State. If it be true, as the Legislature has declared, that a man's real estate should be applied to the satisfaction of his just debts, surely the provisions of our law on that subject ought to be so framed, that the prospects held out to the creditor, may not be evaded by the most open and undisguised knavery.

3. But again. Where there is a single creditor; where no room is left for the operation of injustice as above stated, a case may occur, in which the law will protect one part of a man's estate from such creditor; and this I proceed to point out as the last defect I mean to notice on this head. I find it easier to present it in the form of a case stated. "A dies, leaving a bond due him for $5000 on C, and *lands* also worth $1000, and no other estate. He dies indebted to B in the sum of $2000. The bond due to *A* is *contested*, and no certainty can there be of the result. B sues the Administrator of A for his debt; the Administrator has no assets, and so pleads to the action.—His plea is sustained, for the disputed demand he holds, is not assets, till collected—So soon as the verdict is found in favor of the Administrator, the creditor must elect whether he will proceed against the real estate, or else pray judgment when assets come to the hands of the Administrator—and so rely on the hope of recovering the above contested bond. If he elect *then* to proceed against the lands, he gets one half his debt—and though the Administrator do afterwards recover the $5000, there is no mode pointed out by our law in which B can proceed to coerce the payment of the residue of his demand. If, on the contrary, B elect to take his judgment when assets come to the hands of the Administrator, and the Administrator shall fail to collect the bond aforesaid, the lands are placed beyond the reach of the creditor, for aught that is provided in our law. He cannot afterwards proceed against them, but loses his debt entirely." There has been no adjudication of our *Courts*, on this subject, to the effect stated, yet a careful perusal of the Acts of Assembly on this subject, will convince any one that no provision is made for a case like it. It is a defect that needs the application of some remedy. Though I have illustrated this by the specific case of a man owning a *bond*, his right to which is contested, the intelligent reader may readily substitute other species of property, the title to which is disputed, and hence perceive the general effect of my propositions. I do not purpose to do more than throw out hints on the prolific subject of my essays.

The citizens of our country being aware in some degree of the risque they incurred by the least indulgence on their claims, have for many years been accustomed to attend the Court at which administration would be taken on the estate of a deceased debtor, and I have known such Administrator to be served with a dozen writs before the ink had dried on the paper which recorded his appointment, and before the succeeding Court, scarcely a debt would be owing by the estate for which he was not either sued or warranted. It resulted from this, that the estates of solvent and insolvent dead-men, were taxed with an enormous load of costs—and other inconveniencies also fell on the estates of solvent men. The law which directs the representative to sell on credit, enough of the estate to pay off the debts, to all valuable purposes, is defeated. The property was sold on a credit of 6 or 9 months—the creditor procured his judgment before the expiration of that period, and might cause to be levied and sold the remainder of the property. This was an evil generally felt—and our Legislature have labored to obviate it by a law which was passed at the last General Assembly—but I do humbly conceive that the remedy is worse than was the disease. That Act declares that no Administrator or Executor shall be sued, until *nine* months after his appointment or qualification for any debt due by the estate of his testator or intestate. I think I can show satisfactorily, that as respects *insolvent* estates, it increases the greatest evils we labor under—as respects the *solvent* estates, while in a few cases it may be advantageous, in a very large majority it will bring ruin or oppression on some honest neighbor who stands in the relation of a *surety* for the debts. That such *may* be the state of things, is sufficient to produce change or modification of laws, because laws are intended to restrain bad men, and hence they must be framed upon the supposition that men are so. It will be borne in mind that this law makes no exception—it gives no right to the Administrator or Executor to apportion the estate in his hands among the creditors—it does not in any other respect change the law as regards *insolvent* estates, than to afford the representative 9 months for gathering the assets and selling them—to publish the insolvent condition of the estate—alarm the fears of the creditors—select the most fit subjects for his speculations—give time to practise them—and furnish him with money of the estate to buy up the debts at half price—while his risque is diminished in the repose furnished by this law. There are too many men among us who can and will reap benefit from such opportunities. It is to be hoped that our next Legislature will make some alteration on this subject.

But there are consequences to flow from this law which I do believe were not foreseen by those who passed it. Suppose a case in which a man has given his note for $10,000, and died—and to this note one of his neighbors is a *surety*: now, though the Administrator of the principal cannot be sued for it until after the expiration of nine months, this *surety* may; and in these nine months a judgment may be had and execution sued out on it against the surety, *and he may be stripped of all he owns before the Administrator can be called on for payment.* The estate of the *principal* may be worth more than ten times the sum, and the Administrator who holds it in his hands, may actually attend the sale of the surety's property and buy it at a sacrifice, with the very funds that he ought in honesty, to have applied in satisfaction of the debt. Or the Administrator may very *graciously* consent to pay off the debt to prevent such a sacrifice, *if* the oppressed surety will pay him some moderate price for the favour, perhaps 10 per cent. (which in our day is esteemed a moderate rate of *shaving*.) It is no answer to this, that the surety may pay the debt and afterwards recover it back, for he cannot have restored to him more than the principal and interest—the loss he has sustained in the sacrifice of his property is not taken into the estimate. It is no answer to say, that the *creditor*, in such cases may indulge; for many times it must happen that he *will not*, or it may be he *cannot*, or else he also will exact *his price*. Nor are such cases likely to occur but seldom, for we all know that most of the debts due in our State are secured by aid from the credit of a neighbor, and this law will go into general operation for a few months only, ere it will sacrifice the estates and blast the prospects of many of our citizens, maintaining the relation of surety for others. But we need not put the case, so strongly. Suppose the estate of the *principal* only able to pay his bonds and his notes, his *dignified debts*: in such case if the surety pay off the note (as he must do, unless by the favour of the *creditor*) he disrobes it of legal *dignity* and degrades it to a station that excludes him from ultimate satisfaction. Indeed the holder of the note may himself be interested to force the surety to such a course, for he may have another demand of less dignity which he may desire to find a chance to have paid by purchasing the favor of the Admininistrator or Executor—and in such a state of things the surety must inevitably suffer. Unacquainted with the technical devices of the law, he charges it upon the knavery or the cupidity of his neighbors—he turns to *counsellors* for redress, and with these he finds no higher satisfaction than to be taught that though he is cheated—oppressed—and ruined, it has all been done *according to law*, and therefore he is helpless. I cannot persuade myself that such evils were foreseen or anticipated as practicable under the provisions of the act of 1828, else surely it would not have received the sanction of our last General Assembly.

I could multiply instances of practical evils, and daily oppressions, which may happen, and which do occur under the several rules of our law, on which I have written. That such things are tolerated, that they are remediless in our tribunals of *justice*, is disgraceful to any code of laws. The whole foundation is wrong—every attempt to build on it, must give us similar results. I trust we have among us, intelligence sufficient to devise a remedy, by prescribing more equitable rules on this subject, and independence enough to attempt it, though our present rules are in some measure hallowed by age.—Whether old or new, all must agree that a law which excludes one class of honest creditors, and pays off another—which multiplies in every change the temptation and the opportunity for fraud and oppression, is *not just—is not good.*

L. N. W.

VIRGINIA CONVENTION.

Saturday Oct. 10.

The Convention met at 12 o'clock, and its sitting was opened with prayer by the Rev. Mr. Lee.

The following Gentlemen were announced as having been appointed to constitute the several Committees ordered on Friday, viz:

The Committee to consider the Legislative Department of the Government—Messrs. Leigh, of C. Broadnax, Tyler, Anderson, Johnson, Beirne, Mason, Randolph, Madison, Mercer, Cooke Pendleton, George, Roane, Chapman, Summers, Doddridge, Green, Tazewell, Campbell of B. Townes, Pleasants, Taliaferro and Joynes.

Committee to consider the Executive Department.—Messrs. Giles, Dromgoole, Nicholas, Coffman, McCoy, Smith, Trezvant, Leigh of H. Fitzhugh, Powell, Naylor, Campbell of W. Garnett, Cloyd, Duncan, Morgan, Barbour of C. Loyal, Claytor, Cabell, Gordon, Bates and Upshur.

Committee on the Judicial Department.—Messrs. Jones, Alexander, Marshall, Harrison, Baldwin, Miller, Claiborne, Stanard, Henderson, Griggs, Boyd, McMillan, Morris, Matthews, Laidley, Campbell of O. Scott, Taylor, Mennis, Martin, Thompson and Bailey.

Committee to consider the Bill of Rights, and other matters not referred to the foregoing Committees—Messrs. Taylor of Chesterfield, Goode, Clopton, Williamson, Moore, Baxter, Urquhart, Logan, Opie, Donaldson, Byars, Taylor of Caroline, Oglesby, See, Wilson, Monroe, Prentis, Saunders, Stuart, Massie, and Reid.

The President laid before the Convention a letter, received by him from the Hon. Judge Dade, a member elect to the Convention, resigning on account of his ill health, his seat in the Convention.

On motion of Mr. Doddridge, it was ordered that the foregoing lists of Committees be printed for the use of the House; and then the House adjourned till 12 o'clock on Monday.

Monday Oct. 12

The Convention met at 12 o'clock, according to adjournment; and a prayer was offered by the Revd. Mr. Kerr, of the Baptist Church.

The President presented a communication, stating the death of Mr. Calvin H. Read, a delegate from the Eastern Shore since the meeting of the Convention, as follows:

RICHMOND, 12th Oct. 1829.

SIR: We discharge a melancholy duty in announcing to you the death of Calvin H Read, Esq. a Delegate to the Convention of Virginia from the 24th District, who departed this life on the night of the 6th inst.

This event having occurred since the meeting of the Convention, we the remaining members of that Delegation, have proceeded, according to the provisions of the act of Assembly, to fill the vacancy thereby occasioned. We have appointed Wm. K. Perrin, Esq. of the county of Gloucester, as the successor of Mr. Read, as will appear by the documents which we have now the honour to enclose.

With high consideration, we are
Your obedient servants,
THOS. R. JOYNES,
THOS. M. BAYLY,
A. P. UPSHUR.

These documents were laid upon the table; when Mr. Joynes submitted the following Resolution:

Resolved, that the members of this Convention will wear crape for thirty days in testimony of their respect for the memory of Dr Calvin H. Read of Northampton, who was elected a member of this Convention, and who has died since the meeting of the Convention.

This resolution was unanimously adopted.

Mr. Fitzhugh submitted the following Report:

The Committee appointed to inquire into the compensation proper to be allowed the officers of the Convention, have agreed to the following Resolution:

Resolved, That the allowances to the officers of this Convention, for their services, during its Session, shall be to the President, in addition to his mileage as a member of the Convention, eight dollars per day, to the Secretary one hundred & fifty dollars per week, to the Sergeant at Arms thirty dollars per week, to each of the door-keepers twenty-eight dollars per week; and to the person who cleans the Capitol, fourteen dollars per week.

Mr. Joynes also submitted the following Resolution:

"*Resolved*, That the Auditor of public accounts be requested to prepare and lay before the Convention, a statement of the number of persons in each county of this Commonwealth, who are charged on the Land Books of the years 1828 & 1829, with taxes on a quantity not less than 25 acres, or on a lot or part of a lot in a town established by Law."

Mr. J. said he wished to ascertain by this resolution the number of persons in the Commonwealth, who are debarred from the right of suffrage. He considered that the resolution he had submitted, would approximate sufficiently near to the object he had in view.

Mr. Brodnax suggested that it would be better to adjourn till a later hour in the day than 12 o'clock—as the House had as yet little business before it, and the Committees required much time for preparing their Reports—He, therefore, moved that when the Convention adjourned, it should adjourn till one o'clock the next day—Which was agreed to without opposition.

North-Carolina Bible Society.

Sept. 30, 1829.

RESOLVED, That the friends of the Bible cause throughout the State, especially Delegates from the Bible Societies within the State be invited to meet in General Convention, on Wednesday the 16th day of December next, in the city of Raleigh, for the purpose of devising efficient measures for furnishing, within a given time, the whole State with an adequate supply of Bibles.

The Managers were led to the adoption of the foregoing Resolution, at the request of a neighboring Bible Society, and also, in consequence of a communication received from the American Bible Society, on the same subject.

By order of the Board,
J. GALES, Secy.

☞ Editors friendly to the object of the above resolution are requested to give it a few insertions.

☞ P. S. The Secretaries of several Auxiliary Bible Societies have requested that the above Meeting be held on Wednesday the 18th day of November next, at 11 o'clock, instead of the day first appointed.—To which alteration the Managers agree; and request that those Editors who have noticed the former appointment, will also notice this alteration.

October 9, 1829.

General Agency and Conveyance Office.

THE subscriber respectfully informs his friends and the public generally, that he has opened an Office on Seventh Street West, about midway between the General Post-Office and the Office of the National Intelligencer, where he will be thankful for orders. He will attend to the settlement of accounts of persons at a distance, with individuals in this city and with the Departments of Government; the payment of taxes due on the lots of non-residents, as well as to the sale or leasing of city property; the execution of commissions for taking of depositions and evidence necessary in cases depending in distant Courts; and any other business committed to his charge.

He promises prompt and faithful attention to all matters committed to him, while his charges shall be as moderate as possible. He is authorized to refer for evidence of his competency to the following gentlemen:

Hon. Joseph Kent, late Governor of Maryland.
Hon. Chas. F. Mercer, M. C. from Virginia.
Hon. Joseph Pearson, late M. C. from North Carolina.
Daniel Carroll, of Duddington, Esq.
Joseph Gales, Jr. Esq., Mayor of the City of Washington.
Gen. Walter Jones, Counseller at Law.
Richard S Coxe. Esq. do.
Richard S. Wallach, Esq. do.
William Brent, Esq., Clerk the Circuit Court of the District Columbia.
Thomas Munroe, Esq., late Postmaster.
Roger C. Weightman, Esq. Cashier Bank of Washington.
William A. Bradley, Esq., President Patriotic Bank.
Thomas Carbery, Esq., late Mayor of Washington.

GEORGE SWEENY.

Washington City, Aug. 25, 1829.

Sales at Auction.

BY ORDER OF THE TRUSTEES,

ON Tuesday, the 20th day of October, will commence the Sale of an Entire and Valuable Stock of Goods—consisting of

Dry Goods,
Hardware & Cutlery,
Groceries, &c.

Among which are—

CLOTHS.—Superfine, fine & common Cloths, Cassimeres & Sattinetts.
VESTINGS.—Toilanet, Swansdown, Silk & Marseilles.
SILKS.—Figured & Plain, Black & Coloured, Satins, Levantines & Sarsnets.
MUSLINS.—Cambrick, Jaconett, Mull, Book & Swiss, Plain & Figured.
HOSIERY.—Cotton, Worsted & Silk—Men's & Women's.
GLOVES.—Beaver, Silk, Kid, Horseskin, &c.—Men's & Women's.
SHAWLS & HANDK'FS.—Cotton, Silk, Flag, Merino, &c.
LACES.—Thread, Bobbinett & Cotton.
Lace Veils, Collars, Capes, &c.
Calicoes, Irish Linens & Dimities.
Ribbons, Cotton Balls, Tapes & Bindings.
Several Bales of Domestic Goods.

☞ The Sale will be on a liberal and extended credit, and will continue from day to day until closed. The Goods will be ready for examination two days previous to the Sale

WILLKINGS, & Co.
Auctioneers.

Fayetteville, Oct. 8. 15 ts

AUCTION SALES.

ON Friday, the 23d day of October, at the Store of the Subscribers, a large and general Assortment of

Groceries, &c.

Terms liberal, and will be made known at Sale.

WILLKINGS & Co.
Auctioneers.

Fayetteville, Oct. 8. 15 ts

OXFORD MALE ACADEMY.

THE Examination of this Institution will begin on Monday, November 9th, and close with the semi-annual Report, on Wednesday morning.

All that feel interested, are respectfully invited to attend.

ROBERT B. GILLIAM, Sec'y.

Oxford Oct. 9, 1829. 15-4 w

☞ The Tarborough Press, Edenton Gazette & Norfolk Herald, will publish the above three weeks and forward their accounts as heretofore.

State of North-Carolina.

Wake County.

Court of Pleas and Quarter Sessions, August Session, 1829.

The Post Master General, vs. Daniel Peck. } Original Attach't, Levied in the hands of Wyatt Harrison & Mark Cooke, & they sum'nd as Garnish's.

IN this case, it appearing to the Court, that the defendant, Daniel Peck hath removed himself beyond the limits of this State, or so conceals himself that the ordinary process of law cannot be served on him: It is therefore ordered by the Court, that publication be made in the Raleigh Register, for six weeks, that unless Defendant comes forward on or before the next County Court of Pleas and Quarter Sessions, to be held for the county of Wake at the Court House in Raleigh on the 3d Monday of November next, then and there to replevy and plead to issue, the property levied on will be condemned subject to plaintiff's recovery.

By order of the Court,
B. S. KING, C. C.

PRINTING
Neatly executed at this Office.