THE RALEIGH REGISTER.

J. C. L. HARRIS, Editor.] "Ours are the plans of fair delightful peace—unwarped by party rage to live like brothers." [W. M. BROWN, Publishe

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The Weekly Register.

The case of Potts who was nominated for Postmaster of Petersburg has been postponed another week.

Russia snubs England, by informing its representative at the court of St. Petersburgh, in substance that the war in Turkey and the advance of the Russian army upon Constantinople, "is a question which peculiarly interests the belligerents." In other words, the British Lion will please keep its nose out of this little affair.

THE EUROPEAN STRUGGLE.

The latest intelligence from Europe is of a serious character. The Porte having refused its consent that the English fleet should approach Constantinople, it is understood that orders have been issued to the British admiral to force an entrance into the Dardanelles. Russia has given notice, that, in such an event, the imperial forces will occupy the Turkish Capital. Everything may turn on the character of the Russian occupation. Should the Turkish forts open fire on the British Iron clads, then the result may be the destruction of Constantinople, which, if it should be manned by Russian soldiers will, without doubt, open the ball, and war will actually exist between the two mightiest powers on earth.

Meanwhile, we are reclining happily under our "own vines and fig-trees," with none to molest or make us afraid.

Who wouldn't be an American citizen, even if money is not as plentiful as some folks wish?

THE DIFFERENCE.

It is reported, that Ex-Governor Walker, of Virginia, expects to remove to California after his term of service in Congress expires. Walker is a Northern man, who took up his abode in Virginia at the close of the war and turned Democrat, thereby getting into the good graces of the descendants of Pocahontus. He was made Governor, and afterwards elected to Congress from the Richmond district. Having weeded his row he now proposes to try a new field of action.

If Walker was a Republican, the "magnificent Virginia Press" would be howling over this desertion, and such epithets as "carpet-bag scoundrel," would be freely indulged in. In personal appearance Walker resembles "Zeb," but no more like "*our* Zeb," in many respects, than the counterfeit picture of Hamlet's father, or, to use a popular phrase, than "chalk is like cheese." Walker is what they used to term in the days of Van Buren a "Northern man with Southern principles," while "Zeb" is "Buncombe" to the bottom.

Digest of Supreme Court Decisions.

From the Daily Observer.

[By Messrs. Gray & Stamps, Attorneys at Law.]

By Smith, C. J:—

Clark vs. Wagoner, et al., from Iredell, Motion denied.

The facts in this case are stated in 74th N. C. Reports, p. 791 and again in 76th N. C., p. 463. The question before the Court at this term is on a motion by the plaintiff, to have the judgment corrected by taxing the costs against the defendants on the ground that he has recovered a small part of the land in dispute, although there has been no proof that the defendants have had possession of that part or withheld possession from the plantiff, or committed any acts of trespass thereon.

Held, that the plaintiff is not entitled to the motion. In his complaint he alleged title, and that the defendants withheld possession from him. The verdict established his title to a small part, but to recover damages or costs he must show some wrongful act of defendants done on that part to which he has shown title. The defendants were not guilty of a *tort* in retaining possession of their own land although they erroneously claimed land belonging to the plaintiff, and costs will not be taxed against them.

State vs. Needham, from Randolph. Judgment affirmed. Evidence—Confessions by prisoner.

Indictment for larceny and receiving stolen goods. On the trial the Judge excluded certain admissions made by the defendant on the preliminary examination before the Magistrate, on the ground that he had not been instructed and put on his guard as required by sections 22 and 23, chapter 33, Battle's Revisal. A witness, who had been present at the examination before the Magistrate, testified that he had heard no inducements held out to the prisoner to confess. The State then offered to prove certain voluntary confessions which were made by the defendant at interviews which the witness had with him at his request. The defendant objected to this evidence on the ground that it was to be presumed that the same influence which prompted the confession before the Magistrate continued to operate on his mind, and that to render the evidence competent it must be shown that he had been previously informed that the statements he had made before the Magistrate could not be used against him, and the influence that induced them thus removed. The Court admitted the testimony and the defendant expected, and after a verdict of guilty and judgment, appealed to this Court.

Held, That the evidence was properly received, as the confession was proved to be voluntary and made without the exercise of any influence appealing either to the hopes or fears of the prisoner. This case does not fall under the rule laid down in State vs. Gregory, 5 Iredell 315, and State vs. Scales, *Ib.* 420. *State vs. Jefferson*, 6 *Iredell*, is cited and approved.

By Reade, J.:—

State vs. Harman, from Watauga. Error. *Venire de vono*. Murder—manslaughter.

This was an indictment for murder, tried at Fall Term of Watauga Superior Court. The facts are these: The prisoner, on coming to his house, looked through a crack and saw the deceased, whom he had previously suspected, with his arm around his wife's neck, and other acts enough to satisfy him, and ran around to the door and into his house, when the deceased came at him with a knife, and he killed him:

Held, That though the situation was not the *very act*, it was severely approximate, and the killing was only Manslaughter.

Held also. That, leaving adultery out of the case, the fact that deceased was in the prisoner's house in a hostile attitude, and, upon the prisoner's entrance, coming at him with a knife, and the prisoner, from the necessity of saving himself, killing him, made the act but manslaughter at most, and the prisoner needed not to stand entirely on the defensive. On the defensive simply, it was excusable homicide.

The State offered in evidence the declarations of the prisoner relating facts as set forth:

Held, That he had a right to have the law declared upon the hypothesis that they were as stated.

State vs. Smith, from Craven. Error. *Venire de novo*. Forgery.–Variance.–Witness.

This was an indictment for forging an order for $60.07, tried at Fall Term of Craven Superior Court. There was no evidence, as appeared by the record in this court, tending to show that the defendant had forged the order set out in the indictment. The only evidence introduced related to two other orders for different amounts than that named in the bill.

Held, Of course he ought not to have been convicted.

Held, also, That it was error to allow a witness for the State to testify without being sworn, th edefendant objecting.

By Rodman. J.:

Phillips vs. Holland, from Davidson. Error.

In 1872 the plaintiff commenced in the Superior Court of Davie county an action of claim and delivery fo the possession of two mules, alleged to be unlawfully detained from him by the defendant. The summons and requisition were issued to Davidson and put in the hands of Jacob Sowers, Sheriff of Davidson county, but were not served. His Deputy went with the plaintiff to the Clerk of Davie Court and stating that he had learned that the mules were in Forsyth county, had the Clerk to alter the requisition by striking out "Davidson" and inserting "Forsyth." The summons was subsequently altered in the same way by the Deputy Sheriff. No written return was made on the summons or requisition, but the original papers thus altered were sent to the Sheriff of Forsyth. The mules were not taken to Forsyth but were sent by Holland in another direction and sold. An action was subsequently begun by the plaintiff against Sowers, the Sheriff of Davidson, for dammages sustained by his failure to serve the process and seize the mules as required in the order. During the trial of the cause of Phillips vs. Sowers, a motion was made to have the process in Phillips vs. Holland restored to its oiginal form so as to read as it did before it was altered and when it was placed in the hands of Sheriff Sowers. Judge Kerr granted the amendment and the defendant appealed.

Held, That when the summons and requisition were altered by being directed to the sheriff of Forsyth by the Clerk and at the instance of the plaintiff, they became new and original process of the same force and effect as if they had been originally written as they then stood. If the sheriff of Forsyth acted on them he is clearly entitled that they shall remain in his hands for his protection and as proof of his authority. Even if he did not act under them, he and the defendant and the Sheriff of Davidson acquired a right that they should remain as they were in the hands of the sheriff of Forsyth, as evidence of the fact that they had been in his hands and such a suit had been begun. Process may be amended but not when third persons have acquired rights and the amendment is in such a matter that their rights may be prejudiced by it. *Bank of Cape Fear vs. Williamson*, 2 *Ired.* 147. *and Smith vs. Low*, *Ib.* 457.

The interest of the Sheriff of Davidson that the process should remain as it was before the proposed amendment was made, is like in effect and, for aught that appears, equals in degree with that of the plaintiff. The amendment asked for here would certainly shift the burden of proof of a material fact from the plaintiff and throw it on the Sheriff, to the benefit of which this Court does not see that the plaintiff has made out any superior claim.

There was nothing irregular in the suspension of the trial in the case of Phillips vs. Sowers to consider this motion to amend. The order of procedure in a Court must almost entirely be in the discretion of the presiding Judge, and it does not appear that there was any abuse of that discretion. There was error in allowing the amendment.

State vs. Matthews and Humphreys. Error. *Venire de novo*.

The defendants were indicted at the Fall Term of Yadkin Superior Court for the killing of Coston Butner in June and were tried at the Fall Term of Forsyth Superior Court before Cox, Judge. The facts in evidence as they relate to Matthews, stated generally, are these: Butner, the deceased, and the two defendants and some others were in a public road. Humphreys charged Butner with having sworn to lies against him and said he could prove it by Matthews. According to one witness he said to Butner: "D—n you, I will shoot you, you swore d—d lies against me and I can prove it. Come up here, Sid Matthews." This witness stated that Matthews then stepped up; deceased advanced three steps and struck Matthews a backhanded lick, knocked him on his knees and stamped at him. When Matthews was down he was partly on his side and the stamping was about legs and then his body. Another witness testified substantially as above, except he did not say that the deceased advanced upon Matthews. He said that as M. stepped up, deceased struck him and he fell partly on his hands, when the deceased kicked him, etc. Matthews rose and about that time deceased commenced falling backward, rose a second time, staggered and fell and died in a short time. No witness saw any blow with a knife given. Another witness said that when Matthews rose to his feet he saw him and the deceased standing confronting each other with knives in there hands; deceased soon fell and in a few minutes died. He died from a wound in his thigh about six inches below the groin. It was evident from the testimony that Matthews gave the wound while he was on his knees or otherwise prostrate on the ground. The Judge allowed it to be given in evidence that Matthews was small, crippled and one-eyed, and that the deceased was a strong man, but refused to allow the defendants to prove his character for violence, to which refusal they excpted. The defendants prayed for certain instructions which the Judge read to the jury and stated that "while they embodied correct principles of law yet he would lay down the following rules for their guidance in this case," &c. The jury rendered a verdict of manslaughter, and the defendants after sentence to imprisonment in the penitentiary, Matthews for five years and Humphreys for ten years, appealed:

Held, That the Judge erred in excluding evidence as to the violent character of the deceased, as it comes within the exception to the general rule against such evidence as laid down in Turpin's case, 77 N. C. 473.

1st. As to Matthews: The virtual refusal of the Judge to give the instructions as prayed for was proper since they were less favorable to the defendants than they were entitled to have. In instructing the jury, the Judge, after correctly defining murder, manslaughter and excusable homicide, in substance said: "that when a homicide is proved the law presumes malice, but the presumption may be rebutted by circumstances appearing in evidence whether put in on the part of the State or the defendants." To this there can be no exception; the error in this part of the charge was of omission only. He ought to have gone further and informed the jury that, if they believed the witnesses who were uncontradicted, the circumstances did rebut the presumption of malice. As malice is a presumption which the law makes from the fact of killing, it must necessarily be a matter of law what circumstances will rebut the presumption. The jury must pass upon the existenee of the facts which constitute the circumstances, but the Judge should instruct them as matter of law that if certain facts have been proved the presumption is rebutted and they must acquit the defendant of murder. Whether the presumption has been rebutted or not is a question of law just as legal provocation, sufficient cooling time, deadly weapon, reasonable time, negligence, &c.—*State vs. Hildreth*, *9th Iredell* 429, cited and approved.

The Judge in this case left the question of murder an open one for the jury, and without disregarding his instructions, they might have found the defendant guilty of that crime although there was no evidence of express malice, and the legal presumption was rebutted by the testimony of every witness as to the sudden and unexpected beginning of the affray. It cannot be said that because the jury found the defendant guilty of manslaughter only, he was not prejudiced by the omission of the Judge. The true question was between manslaughter and homicide in self-defence. The attention of the jury was distracted from that by their being required to pass on the question of murder which was contradicted by all the evidence, and the defendant was obliged to present his case to them burdened by a weight of accusation from which he ougt to have been relieved by the instructions of the Judge.

The Judge also said: "If it appears from the circumstances that Matthews had reasonable grounds to apprehend that his life was in imminent danger, he was justified in taking the life of his assailant, but there must be a necessity for taking life from the fierceness of the assault before he could be excused on the ground of self defence." His Honor omitted to say that Matthews must have believed in the reality of the danger; what is more important, he omitted to say that if a man who is assailed has reason to believe that although his assailant may not intend to take his life, yet he does intend to and is about to do him som enormous bodily harm, and under this reasonable belief he kills his assailant, it is homicide *se defendendo* and excusable. It will suffice if the assault is felonious. The omission of this qualification of the rule by the Judge was no doubt simply inadvertent.

As to Humphreys: the Judge told the jury that if he was present and did or said anything calculated and intended to make known to Matthews that he would help if need be, by taking part in the fight or keeping others off, or egged him on, he would be guilty of aiding and abetting and equally guilty with Matthews." This, while perhaps correct, was to a general, and did not with sufficient particularity furnish the jury with a rule which they could apply to the facts. When first seen by the witness, Humphreys was cursing deceased: when deceased knocked Matthews down, Humphreys put his hand in his pocket and said he would shoot the d—d rasca', when his wife seized and held him until deceased fell. Another witness said that when Matthews was down, H. said "stand back, I am going to shoot the——;" when his wife seized him &c. He did not shoot.

The Judge erred in leaving it an open question to the Jury whether or not this defendant was guilty of murder. As he did not commit homicide, there was no presumption of malice in him to be rebutted. To make him guilty of murder there must have been a concert between him and Matthews to kill the deceased.

Although Humphreys had challenged the deceased to fight *with him*, there was no evidence tending to prove that he expected the fight which took place, the one between Matthews and the deceased. If Matthews acted in self-defence, Humphreys was guilty of no crime. What H. said before the fight must be excluded from consideration because it was not intended or calculated to provoke a fight between Matthews and the deceased. What he said after the fatal wound was given must also be excluded because it could not aid or abet Matthews to give it. What H. said during the fight was calculated to encourage Matthews and the jury may have found that Humphreys was a principal in the manslaughter; but they might also have found that he reasonably believed that M. was about to be feloniously killed and interfered to the extent he did to prevent a felony. The error of the Judge was in his failing to present particularly to the jury the law applicable to these hypothetical cases, and in leaving it to them in a general way and without any particular instruction to find whether H. did or did not aid or encourage Matthews.

Shocking Murder.

A most horrible murder was committed a few days since, in the farm of Wm. F. Atkinson in Wayne county, ten miles west of Goldsboro. The victims were a man named Worley and his wife. The pair occupied a log cabin together with three children all girls, the eldest five, the next three and the youngest eighteen months old.

The husband was found lying about ten feet from his log cabin door, with his head cut to pices with an axe. His wife was lying just out of the back door. She was evidently choked to death, though her head was badly bruised from blows with an axe. There were pools of blood around each, presenting one of the most horrible scenes ever witnessed. The oldest child, when asked "who struck your papa?" said: "Uncle Noah meaning Noah Cherry, an old negro man who was engaged getting staves near by.

Worley was a tenant on Atkinson's farm, and a peaceable man.

The evidence, though somewhat conflicting, shows conclusively that Noah Cherry committed the awful crime.

The oldest daughter gives a plain statement of the affair. She says:

"Papa was lying down in front of the fire. Mother was sitting in the chair, at work on a quilt. Uncle Noah came in and said to Worley: "I am going to kill you." He then struck him. Papa rose up, and went out, calling for help."

The dog gave Cherry trouble, but finally Cherry killed Worley, and then attacked the wife. The child says that he tried to tie her mother, choked her and then committed rape. This is shown by a careful examination of physicians.

Other facts show that little Tildie Worley's story is true. The clothes of the guilty wretch were exhibited, which were covered with blood.

Noah Cherry is in jail. The excitement in the county is intense.

BY ALL MEANS BE AN EDITOR.

An editor is the happiest being on earth. He has little or nothing to do, and his pay is all that heart could wish. His sanctum, with its Persian rugs and Turkish carpets, its costly furniture, its magnificent mirrors, its beautiful pictures, its complete library of splendidly-bound books, its silver bell to summon an attendant, and, in short, with its everything that human ingenuity can devise for his comfort and pleasure, is a perfect little paradise, where he sits or lounges and reigns a young lord, with the world of fashion and pleasure at his feet. And then anybody can be an editor—no study, no preparation, no brains, nothing but a little money to start with, and once started the money pours in upon you in a steady stream, and the chief labor of your wife is to spend it. As for the labor of editing a newspaper, that is all moon shine. A mere glace at the columns of a newspaper is enough to convince you that it requires no labor to edit it, and less brains. It is certainly a glorious life, that of an editor; a life of luxurious ease and of elegant leisure—a life filled, like that of the young lover in his first dream of requited love, with flutes and leaves and moonbeams. That all men are not editors is one of the strangest things beneath the stars. True, there must be doctors and lawyers and merchants and shoemakers and peanut dealers and the like, and all these callings must be filled by somebody, but there are enough to fill them, and why they don't become editors and lead the life of opulen princes is a thing that staggers us.—But after all, it may be that it is a mere matter of taste. It may be repugnant to some natures to become editors.—The life of ease and elegance and luxury, and exemption from all care and toils and debts and duns, would soon become a bore to him, and he would spend his nights in dreaming of ploughs and pitchforks and reaping machines, and squander his days in devising some plan for swapping places with a blacksmith's apprentice or a street-car driver.—*Louisville Courier-Journal.*

CAN THIS BE TRUE?

HIDING A MISSHAPEN SON FROM HIS BIRTH UNTIL HE IS TWENTY-SEVEN.

One of the most remarkable instances on record of parental devotion and of success in keeping secret a family affliction may be found in the family of a citizen who is keeping a drinking saloon in the western part of the city. Twenty seven years ago he kept a house on Western row. About that time a number of houses in the vicinity were destroyed by fire in the night, including his residence. His wife, in a delicate condition, suffered much from fright, and consequently gave birth to a monstrosity—an offspring without any of the better senses of a living creature, except that of sight—without toes or fingers; deaf, speechless, without the least spark of intellect or instinct. Twenty-seven years have passed, and the family have kept this creature in the household, secreted in a room, and only a few of the neighbors besides, who are on the most intimate relations, have known of its existence. It eats when food is placed to its mouth, and is kept in a cleanly condition by the most constant care. A long beard has grown on its face. It is about three feet in length. It crawls about some, but moves with great difficulty. That such a creature has lived so long is singular. That a family instead of placing it in some asylum, has endured its presence in their midst, and nurtured it in assiduous privacy through all of these years is a strange and afflicting incident of paternal devotion.—*Cincinnati Commercial.*

Nothing could be more touching than the tender solicitude which the powers of Europe unite in expressing for the Christians of Constantinople. Great Britain, according to Sir Stafford Northcote, has "not changed its intention" to protect these unfortunates with at least five of her heaviest iron clads, Austria, also, proposes to come to their rescue with a fleet in the Dardanelles. And now, Prince Gortschakoff announces that this singular attack of Christian zeal awakens a response in the breast of Russia, and that rather than be outdone by her rivals in this new crusade, the Russian Army shall immediately occupy the works about the city and surround the much-protected Christians with its benevolent Cossacks and cannon. It is only the hard-hearted Turk, who, by refusing firmans to the English and Austrians, allowing their approach to the vicinity of the objects of their unselfish affection, interferes with this beautiful display of humanity. Meanwhile the "Christians" have not been heard from.—*N. Y. Times.*

There Must Be Parties.—Until the mellenium comes parties must exist. They are a necessity. The men are theorists and dreamers who insist that an administration is a mere detective agency to collect the revenues and prosecute for crimes; that it needs no party, no policy, no propagandism, no care whether or not a majority of the country shall rally to its support through party organization giving it majorities in Congress to put its ideas into laws. This is all chimerical and foolish. An administration should be concerned in matters of statesmanship, and it ought to use its power to magnify and establish the ideas that the people endorsed at the election. This can be done only through the human agencies that "politics" set in motion. Thus far it is the business of the President to be a politician.—*North Carolinian.*