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, Publisher.

VOLUME I. RALEIGH, THURSDAY, FEBRUARY 28, 1878. NUMBER 45.

The Weekly Register.

RIDICULING LEACH!

Gen J. M. Leach and Mr. T. B. Keogh are in Washington, lobbying against Waddell's bill to abolish the Western District Court. Wont somebody please give Leach an office and keep him quiet?—*Wilmington Star.*

The people who are not slaves to the party lash, will probably take care of Gen. Leach. Democratic organs should remember, that James Madison Leach, has never been defeated by the people!

DEFINING THEIR POSITION.

A good feature of the new Georgia Constitution is the requirement that all persons shall have paid all taxes charged against them before being permitted to vote.—*Charlotte Democrat.*

For our own part we adhere to an opening long ago urged, that payment of poll tax should be required as a prerequisite for voting, and shall always regret that the last Constitutional Convention did not embody the plan in the fundamental law. And the time may come when the insertion of such provision will be demanded.—*Hillsboro Recorder.*

The Constitution of North Carolina ordains universal suffrage, based upon manhood. A large majority of the Democratic party are in favor of adding a qualification to the present free suffrage provision of the Constitution, requiring the exhibition of a receipt for the taxes of the previous year, as a prerequisite to voting. If a man is not able to pay taxes and has not been exempted by the County Commissioners, he is to be punished for his poverty. The proposition to require the exhibition of the poll tax receipt, is unjust and would discriminate against the poor. We are unalterably opposed to any restriction upon manhood suffrage; but if a tax receipt is to be required, that receipt should apply to taxes upon all the subjects of taxation. We have no doubt of the result upon this issue, whenever it is put to a vote.

A QUESTION OF SANITY.

The next Republican State Convention will take ground for the abolition of the poll tax.—*Raleigh Register.*

Then the next Republican State Convention will prove themselves an assemblage of political idiots.—*Henderson Courier.*

Assertions without reasons to convince the judgment do not carry much weight. It may be that our esteemed cotemporary is right, but we prefer to digest the reasons for the above assertion, before we retreat from our position in favor of the abolition of the poll tax. There is much to be said for and against the proposition; the truth can only be ascertained by a thorough discussion of the proposition. If *The Courier* has well grounded reasons for opposing the ablotion of the poll tax, its readers are entitled to them.

THE "SILVER BILL."

How it rings!—"the silver bill!" who would not like to have as many silver dollars as would fill the State House? Silver is good in its place, and so is gold, and so are greenbacks. But can silver be made equal to gold? Gold is the rarest and most precious metal; gold is more convenient to handle than silver. If you pay a man twenty silver dollars, these dollars are so weighty that it is inconvenient for him to carry them; but if you pay him a twenty dollar gold piece he slips it in his vest pocket, and hardly feels the weight of it.

Make the silver dollar equal in value to the gold dollar, and there can be no objection to it, provided it is made a *little more valuable* than the gold dollar, so as to compensate for the inconvenience of handling it. We have no feeling on the subject. We think as much of silver in its place as we do of gold. As a matter of convenience we would prefer the greenback or national bank note. But will Congress authorize a proper silver dollar? Even four hundred and twenty grains will not do, for we observe that the "trade dollar" thus made, is worth only 97 cents in New York. Four hundred and twelve and a half grains, the proposed new dollar, would be, therefore, not worth more than 92 cents.

We see by the papers that one of our corporations has just paid its employees in silver. Silver can be bought with greenbacks at 92 to 93 cents in the dollar. In every one hundred dollars thus paid out to its employees by this corporation, it is clear that the corporation made seven dollars, and its employees lost seven dollars, and so on in proportion. The poor man has not, therefore, thus far been benefitted by payments made in silver. Such a silver dollar as the one we have above mentioned would be convertible into gold or greenbacks at will. What the country wants is a *readily and constantly convertible currency.* Such a currency, while it would not injuriously affect any interest, would be of substantial service to all classes of our people.

It is said the President will veto the so-called silver bill. We do not know what foundation there is for this supposition, but we will venture to predict that if he should do so, he will, at the same time, suggest the very best bill that could be passed on the subject.

Digest of Supreme Court Decisions.

From the Daily Observer.

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

BY SMITH, C. J:—

State vs. Long et als., from Guilford—Error—Judgment arrested. Landlord and tenant. Repeal of Statute.

This was an indictment under sec. 15, chapter 64, Battle's Revisal, against the tenant and lessee of land, the rent of which was to be a share of the crop, for removing the crop without the lessee's assent, without prescribed notice, and against other defendants for aiding and abetting the act. Verdict of guilty against all the defendants except J. W. Wood. Motion in arrest of judgment disallowed. The section referred to in Battle's Revisal was amended by act of Assembly, March 19th, 1875, and subsequently by another act March 12th, 1877, the 8th section of which in express terms repeals sections 13, 14 and 15, chapter 64, Battle's Revisal and chapter 209 of Acts of '74-'75; and makes removal of crop or any part of it from the land on which it was grown, without payment of rent, etc., a misdemeanor.

Held, That a repeal of a Statute, in a prosecution for an offence created under it, arrests the proceeding, and withdraws all authority to pronounce judgment, even after conviction; and no aid can be derived from the last enactment, which is necessarily prospective only in its operation, and under the Constitution cannot apply to antecedent acts. State vs. Nutt and State vs. Wise, cited and approved.

State vs. Laxton: from Iredell.—Judgment affirmed.

Indictment for rape tried at Spring Term 1877 of Iredell Superior Court before Schenck, Judge. The offence was committed in Caldwell county and the prisoner was convicted at Fall Term 1876 of the Superior Court of that county, but on appeal to the Supreme Court was granted a new trial (76 N. C—) and upon application the case was removed to Iredell. There was a verdict of guilty, judgment of death and appeal.

During the trial, the prosecutrix in giving her testimony wept and hesitated in a part of her narration. The Court said "you need not use and the Court will not require you to use language that will shock your modesty."

The mother of the prosecutrix while testifying, hung down her head, wept and spoke in a low tone of voice. The defendant's counsel told her to hold up her head and speak louder and called on the court to enforce this request. His Honor replied that he would not compel her to hold up her head but would require her to speak so as to be heard by the counsel—that some allowance was to be made for the woman *as she was overcome with emotion.* The defendant excepted to these remarks as indicating an opinion on the weight of testimony.

During the trial the prosecutrix and other witnesses remained in the court room, and make demonstrations of feeling calculated to excite the sympathy of the jury and warp their judgment. The defendant did not ask the court to order their removal, but made an exception to their conduct.

To contradict the testimony of the prosecutrix, the prisoner's counsel offered in evidence her examination when before the magistrate. The Solicitor for the State then offered to prove the account of the matter given by the prosecutrix to her mother after her return home, as concurring with and corroborating her testimony and affecting her credit. This, on objection, was admitted by the Court.

Held, 1st: That there was nothing improper in the remark of the Judge to which first exception was taken. It is the duty of the Judge to preserve the dignity of the Court and to see that the decencies of life are not needlessly violated.

Held 2nd: That the remark of the Judge on which second exception was based was not improper. The emotion of the witness was manifest to the jury as well as to the Judge, and had he made the order as requested, it would have been as strong an intimation of opinion that the emotion was assumed, as his refusal to make the order indicated a belief that it was real. Had the witness fainted or become sick while giving in evidence, the objection would apply with equal force to the action of the Judge in directing a physician to be called in to prescribe for her. The act of 1769, re-enacted in sec. 237 C. C. P., forbidding a Judge in giving a charge to the jury, to give an opinion whether a fact is fully or sufficiently proven, does not apply to the above cases. The special object of that act was to prevent the intimation of an opinion in connection with and constituting a part of the instructions by which the jury were to be governed, and when its influence over their minds would be direct and effective.

Held, 3d: That as the Judge was not asked to order the removal of the witnesses from the Court Room, it was not improper for him to allow them to remain. *Quere*, whether it would have been error if he had been asked to remove them and had refused.

Held, 4th: That it was not error to admit the testimony to which objection was made. The competence of such evidence is clearly established in March vs. Harrell 1 Jones 289.

There is no error. Judgment below affirmed.

BY BYNUM, J:—

State vs. England. Mistrial.

In the trial of an indictment against the defendant for burning a stable containing horses, tried at Fall Special Term of Burke Superior Court, before Schenck, Judge, and a jury, the Solicitor discovered fatal defects in the indictment, and moved the Court to withdraw a juror and order a mistrial to be entered. This was done, and the defendant excepted. At the same term, a new bill of indictment was found, and the defendant was tried and convicted. His counsel then moved for his discharge on the ground of error in ordering the mistrial under first indictment. The motion was refused, judgment of ten years' imprisonment in the Penitentiary was pronounced and the defendant appealed.

Held, That the principle of law that no person shall be subject, for the same offence, to be twice put in jeopardy, &c., does not apply.

The evidence in the case was circumstantial. Several witnesses marked tracks near the stable, and one Morris testified that he applied a measure he had taken to the foot of Jos. England, brother of the prisoner. The Solicitor then asked if it fitted, which was objected to but allowed. Held Error. The evidence was *inter alia acta* and inadmissible. State vs. Davis, 77 N. C., cited and approved.

Ritch *et al.* vs. Wilson *et al.*, Executors, from Cabarrus. Judgment modified and affirmed.

A testator, in his will, says: Item 9. I give and bequeath and direct to divided as follows (subject to the payment of debts and incidental expenses of administration) to wit: to my grand daughter Eliza, one-half of an undivided fourth part, and the residue I direct to be divided into three equal parts, one of which I bequeath to my daughter Mary, one to my daughter Martha and the remainder to children of my deceased son Zebulon. Item 10. The estate I have herein devised and bequeathed to my daughter Mary and Martha, I give to them and each of them during the term of their natural life and at the death of each to descend to the children of each share and share alike—my said daughters during life to use the profits arising or accruing from their estates respectively and to enure to their sole and separate and exclusive use and benefit, and at the death of each to descend as aforesaid." The estate disposed of by the 9th item consisted of horses, mules, farming tools, household furniture, etc., to the value $3,000, and of cash on hand, notes and bonds of the value of $15,000. The question presented was whether Mary and Martha, the legatees for life, were entitled to the possession of the personal estate so limited to them for life and then to their children. His Honor, Judge Schenck, decided that it was the duty of the Executors to sell the personal property and pay over the interest on the fund so acquired (after paying debts) to the legatees for life, annually, and the principal to the children at the death of the legatees for life. Appeal by the plaintiffs.

Held, That the intention of the testator is manifest that the life tenants are not to have the property itself, but only the interest or profits of it during life and the remaindermen are to have the principal. His purpose to benefit the remaindermen would be in a great measure defeated if the legatees for life were entitled to the possession of the property. A large portion of it is perishable. A gift of things *quae ipso usu consumuntur*, if construed as a specific legacy, carrying the possession to the life tenant, would amount in fact to an absolute gift; for so much thereof, as may be consumed in the using, is gone forever without compensation to the remaindermen. The rule in the English courts of Equity and in this State, is that where personal property is bequeathed for life with remainder over and the bequest is not specific in terms, and there is nothing in the will to show an intention or preference that the life tenant shall enjoy the specific property left, and in the form in which it is left, it must be converted into money as a fund to be held and applied for the benefit of all by paying the interest to the legatee for life and the principal to the remainderman.

The judgment of the Court below will be affirmed as far as it goes, but it does not extend far enough. The plaintiffs are entitled to an account of the residue of the estate so bequeathed in order that the amount of the fund, the interest of which they are entitled to for life, may be definitely ascertained.

BY FAIRCLOTH, J.:—

Neighbors vs. Hamlin, Executor; from Randolph. Judgment affirmed. Executors—Power to remove, &c.

The plaintiff in this case alleges that he is a creditor of the defendant's testator, and that the defendant is "wholly insolvent and irresponsible," and that if he should collect certain funds "this affiant believes that the defendant would misapply said money and would not pay off the debt of the affiant," and asks that the defendant Executor be required to give bond or removed.

Held, That poverty alone will not entitle the plaintiff to his prayer, neither will the latter clause of the affidavit do so, as it only alleges affiant's belief, without setting forth any facts, circumstances or reasons for his belief.

Cobb et al., vs. Gray et al., from Alamance. Judgment affirmed. New note—Scale.

In 1853 Mary, Margaret and Phoebe Gray gave their note to the plaintiff's intestate and afterwards made several payments which were credited thereon. In January 1863 they went to him to make another payment of $200, but there being no space on the note to enter the credit, a new note under seal was executed for the balance due, less the $200 payment, and was signed by said Mary, Margaret and the husband of Phoebe, and payable to plaintiff's intestate, who received it in substitution of the old note, which was surrendered to the makers. The new note is the subject of this suit.

Held, That said note is not subject to the scale. Novation is not to be presumed unless it clearly results from the acts of the parties, and in this case the new note was not made for the benefit of the creditor, nor upon any idea of a loan of that amount of money.

BY READE, J.:

Summer vs. C. C. & A. Railroad, from Cabarrus. *Venire de novo.* Railroads—Liability of common carriers and bailees—Double agency.

The theory of the plaintiff is that in November, 1864, he delivered to the defendant at its depot at Ridgeway, S. C., 85 bales of cotton to be delivered to him in Charlotte, N. C., and that same was never delivered, but was a total loss. To support this theory plaintiff testified that one Craige was defendant's depot agent at Ridgeway, and that he, the plaintiff, in October 1863, employed Craige as his agent to buy cotton for him and that Craige agreed "to ship any cotton so purchased wherever directed." It was in evidence that the cotton was purchased and was at Ridgeway on the 10th of Feb, 1865, and that Craige said he had not shipped for want of cars.

Held, Taking this testimony as true it does not support plaintiff's claim: that Craige, as depot agent, had the power to bind the defendant in regard to all matters germane to its business, but not beyond, and certainly his power did not extend to purchasing cotton for space of twelve months. That as to buying and shipping cotton he was agent of plaintiff, and the defendant is not liable for the failure to perform his duty as such. The law does not favor double agencies, and it is especially reprehensible in a case like this. A Railroad ought to serve the public impartially, but the temptation to do otherwise, and the case with which it can be done when its agent is also agent for another, makes it impolitic to encourage it, to say the least. It appeared also that the entire 85 bales were not purchased until Dec. 1864, and hence it was impossible to ship before that time, and then the military forces had taken possession of the road so that the defendant could not transport cotton. The defendant asked his Honor to charge that this was a good defence, which was refused.

Held. Error. The defendant in this case was acting in the capacity of bailee and not common carrier, and his Honor erred in not making the discrimination.

State ex rel. Harris vs. Harrison et al., from Wake. Judgment reversed in part and affirmed in part. Guardians—Liability of.

In 1868 the *feme* plaintiff, then an infant, recovered judgment against C. B. Harrison, administrator of McKnight, her former guardian, for $5,997.23. In 1871 said Harrison became the guardian of the *feme* plaintiff and sold her land for $1,471. No part of either of these sums has been paid, and this action is brought to recover them of the defendants, sureties on Harrison's guardian bond. The administrator sureties say they are not liable because the *administrator* Harrison paid over the estate to the *guardian* Harrison; which the guardian sureties deny. The case comes up upon exceptions to referee's report, the principal defences being, first, "that the sureties on the guardian bond are not liable, *as for money collected and not accounted for*, for money received by Harrison, administrator, and wasted by him before he made it his ward's money." And that in order to make it his ward's money it must have been separated and set apart, or otherwise appropriated by the administrator to the guardian. Secondly: "That the sureties on the guardian bond are not liable for the guardian's *failure to collect* the judgment in favor of the ward ($5,997) against the administrator, if that judgment is still collectable by the ward."

Held, That if the administrator had the fund and wasted it, or whether he wasted it or not, it was the duty of the guardian to collect it, it being collectable, and his failure to do so was a breach of his bond for which he and his sureties are liable in damages.

Held, also, That the guardian not having acted in good faith, he and his sureties are liable for the full amount of the debt to the ward, although she might collect it out of the administration bond. She has her election to sue either set of sureties, or both, and to get judgment against both, collecting only out of one.

Held, further, That a guardian, who acts in good faith, and has his ward's estate *in hand*, although it may consist in whole or in part of evidences of debt uncollected, is not liable as for "money had and received," nor for not having collected the money. But this is not the rule where the investment is not well secured, &c., and where the guardian does not act in good faith.

Held, also, That the defendants in this case are liable, not only for what the guardian, Harrison, did receive from the estate of McKnight, but for what through his neglect and bad faith he failed to receive.

The case is referred to the clerk to reform referee's report.

BY RODMAN, J.:—

State vs. Shaft, from Buncombe. Error. Order Reversed.

At Spring Term, 1877, of Buncombe Superior Court, the defendant was convicted of fornication and adultery, and was sentenced to imprisonment for six months in the county jail. On the 10th of June following, after he had been in jail two months, the County Commissioners acting under supposed authority conferred by Act of Assembly, chap., 1876-'77, hired the defendant to his wife, Laura, for the remainder of the term to which he was sentenced. After this he went at large and without restraint, returning to the jail at night. The bond given to the Commissioners was signed by the defendant and his wife and by three other persons, in the penal sum of forty dollars and conditioned as follows: "Whereas the above bounden Laura E. Shaft has this day hired of said Board (of County Commissioners) said Alexander Shaft who is now undergoing sentence in Buncombe jail for the rest of the term of said Shaft, which is now about four months, at five dollars per month. Now, if the said Laura Shaft shall well and truly pay the said sum of five dollars per month for said Shaft, or at that rate for the time he may work while a convict, then this obligation shall be void. It is further understood that the said Laura Shaft is to board the said Alexander Shaft, and it is also understood that said Alexander Shaft is to report to the jailor every evening between sundown and dark, and to be let out between daylight and sun-up; and if the said Shaft refuses to carry out this part of the agreement, then the Sheriff or jailor is authorized to lock up and keep the said Shaft in jail for the rest of the term, and the said Laura is only to pay for the time said Alexander has worked."

At Fall Term of Buncombe Superior Court the matter was brought to the attention of his Honor, Judge Schenck, by Solicitor Gudger, who moved the Court to remand the defendant to jail for the balance of the six months to which he had been sentenced. His Honor being of opinion that the contract with the Commissioners was void, and intended as an evasion of the law, remanded the defendant to jail from which order the defendant appealed.

Held: That though the contract of hiring to the wife was void as to her, yet the sureties are bound. It was suggested that to allow the wife of a prisoner to hire him, is to substantially allow him to escape punishment. But neither the Superior Court, nor the Supreme Court, can annul a hiring by the County Commissioners because the master may be, or is, either too kind or too harsh. The selection of a master is confided to the Commissioners. The idea of the Attorney General in the argument, and perhaps of the Judge below, was that the punishment was evaded. "But considering the *nature* of the *defendant's crime*, it may be that the Commissioners ingeniously devised to aggravate the punishment by arming his wife, in addition to the usual and acknowledged powers of a wife *in such cases*, with those of a master paying for his work and entitled thereby to keep him in sight and hearing. In this view, the permission to return to the jail after sunset and remain until sunrise looks like a merciful alleviation of what would otherwise have been a cruel and unusual punishment." The Judge below erred in undertaking to annual the action of the County Commissioners, and his order to that effect must be reversed.

Gatlin vs. Town of Tarboro—from Edgecombe. Judgment reversed. Traders' tax—Power of Town—(Bynum, J., dissenting).

The Legislature, Acts of 1876-'77, chap. 288, enacted, that on the first days of April, July, October and January in each year, any trader doing business in the town of Tarboro shall pay a tax of one dollar for every $1,000 worth of goods sold by him during the preceding quarter, to be collected by the officers of the town, and accounted for, as other taxes are. This action is brought to resist the payment of this tax and on these grounds:—That as the traders upon whom alone it is imposed had paid, or are liable to pay, in common with other property owners in the town, an *ad valorem* tax on their property, and also paid a license tax to carry on their trade, the additional tax in question is not uniform and is unconstitutional.

2. That the act is private, and having been passed without any notice of the application, as required by Sec. 12, Art. II, of the Constitution, it is therefore void.

Held, that the tax in this case is uniform and not in violation of the Constitution, which expressly authorizes a tax on trades, &c., which must mean a tax in