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The Old North State

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THE LITTLE BOY THAT DIED.

The late Dr. Chalmers is said to have been
the author of the following beautiful lines,
written on the occasion of the death of a
young son whom he greatly loved:

I am all alone in my chamber, now,
And the midnight hour is near,
And the fagot's crack, and the clock's dull tick,
Are the only sounds I hear.
And over my soul, in its solitude,
Sweet feelings of sadness glide;
For my heart and my eyes are full when I think
Of the little boy that died.

I went one night to my father's house
Went home to the dear ones' gate,
And softly opened the garden gate,
And softly the door of the hall.
My mother came out to meet her son—
She kissed me and then she sighed,
And her head fell on my neck, and she wept
For the little boy that died.

I shall miss him when the flowers come
In the garden where he played;
I shall miss him more by the fireside,
When the flowers are all decayed;
I shall miss his eyes and his empty chair,
And they will speak with a silent speech
Of the little boy that died.

We shall go home to our Father's house—
To our Father's house in the skies,
Where the hopes of souls shall have no blight;
Our love no broken ties;
We shall roam on the banks of the river of
Peace,
And bathe in its peaceful tide;
And one of the joys of life shall be
The little boy that died.

THE HOMESTEAD LAW.

Opinion of Judge Carpenter Deciding it to be Unconstitutional.

The following is the full text of the
recent opinion of the Hon. H. B. Carpenter,
Judge of the First Circuit, in which
he decides the Homestead Law of this
State to be unconstitutional:

Joseph Purcell, for the use of O. B. North-
rop, vs. Dr. James E. Whaley.

On the 27th day of May, 1867, the
plaintiff obtained a judgment by confession
against the defendant for \$3,368 70,
with interest from the day of its rendition,
at twelve per cent per annum, and costs
of suit. On the same day a writ of fieri
facias was lodged in the office of the
Sheriff of Charlotte County (then
District.) On the 6th day of June, 1867,
Purcell assigned the said judgment to U.
B. Northrop for a valuable consideration.
After delay arising from causes not nec-
essary to be here stated, the sheriff, under
and by virtue of said writ, levied upon
the plantation of one hundred acres of land,
situated in the same parish. The de-
fendant gave notice to the sheriff, in
writing, that he claimed a homestead under
the act of the General Assembly,
passed the 9th day of September, 1868.
The case is now before this court, upon
the motion of the plaintiff, to order the
sheriff to proceed to sell the property
levied upon, without reference to the pro-
visions of the act above mentioned.

Section 10, Article 1. (Constitution of
State of South Carolina), provided that
"a reasonable amount of property as a
homestead shall be exempt from seizure
or sale for the payment of any debts or
liabilities, except for the payment of such
obligations as are provided for in this
constitution."

Section 32, Article 2, provides that
"the family homestead of the head of
each family residing in this State, such
homestead consisting of dwelling house,
outbuildings and lands appurtenant, not
to exceed the value of one thousand dol-
lars and yearly product thereof, shall be
exempt from attachment, levy or sale,
on any measure or final process issued
from any court." By the same section,
it is made "the duty of the General As-
sembly to enforce the provisions of this
section by suitable legislation."

In the act of the General Assembly,
before referred to, Section 1 provides that
"whenever the real estate of any head of
a family, residing in this State shall be
levied upon by virtue of any measure or
final process, issued from any court upon
any judgment obtained upon any right

of action, whether arising previous or
subsequent to the ratification of the con-
stitution of the State of South Carolina,
if the same be the family homestead of
such person, the sheriff or other officer
executing said process, shall cause a
homestead, such as the said person may
select, not to exceed the value of \$1000,
to be set off to said person."

The single question in this case is,
are the provisions of the constitution and
the act of the General Assembly, above cited,
with the provisions of the statute of the
State of South Carolina, in relation to the
Constitution of the United States which
prohibits a State from passing a law im-
pairing the obligation of contracts?

The difficulty in determining this ques-
tion lies in ascertaining where the line of
demarcation exists between the acts of
the Legislature, which affect the remedy
only, and those which under the pretence
of affecting the remedy, do impair the ob-
ligation of the contract. It has never
been doubted that the Legislature has the
authority to pass such general laws in re-
gard to remedies as may seem most hu-
mane and wise, where the character and
amount of the exemption do not substan-
tially interfere with the contract itself.

The only question is, does the legisla-
tive act overstep that bound, and under
the guise of legislation upon the remedy,
attack and impair the obligation itself?

In considering the case before me, two
questions present themselves:
First, What is meant by the term
"obligation of contract," as used in the
constitution; and secondly, what consti-
tutes an impairment of that obligation?

The highest legal authorities have an-
swered both questions. A contract is an
agreement to do or not to do a particular
thing specified therein, and its obligation
is that which binds the promisor to per-
form the agreement. It is not the promise
of the mere duty, but it is the remedy
which the law give against the defaulting
party.

This provision of the constitution was
inserted to compel the several States to
maintain the integrity and secure the
faithful execution of contracts throughout
the Union.

The farmers of that instrument had be-
fore them in the legislation of the States,
anterior to the adoption of the constitu-
tion, ample exemplifications of the viola-
tion of the obligation of the contract.

Under the pressure of the struggle
for independence, many of the States
had passed laws prejudicial to private
rights. By some of them the payment of
debts was suspended. In others, debts
were authorized to be paid by instalments
in violation of the contracts. Property,
real and personal, might be tendered by
the debtor in payment of his obligation,
and the creditor was compelled to take
such property at an exorbitant appraisement.

Such legislation produced its natu-
ral results in a system of fraud which de-
stroyed all public confidence, and crippled
all private industrial enterprise. As far
as I am advised, however, even those
States never had the temerity to utterly
abrogate the contract, although they did
impair it by annulling the remedy.

Now, the right and the remedy are so
intimately connected, that the destruction
of the former is the impairment of the
latter; the constitutional provision
was designed to protect both. In the
language of the Supreme Court of the United
States: "It would ill become this court
under these circumstances to depart
from the plain meaning of the words
used, and sanction a distinction between
the right and remedy, which would render
this provision illusory and nugatory mere
words of form, affording no protection and
producing no practical result."

In the present case, upon the rendition
of the judgment, a lien was vested in the
plaintiff, whereby he was to receive from
the real estate of the defendant the
amount of said judgment. This unquestion-
ably was a legal right. At the time
the judgment was rendered, and the lien
locality was created, there was no law in
South Carolina which exempted any portion
of the defendant's land from sale under that
execution. Consequently the Constitution
Convention or the General Assembly enacted
a law, after the rendition of this judgment,
which divested the plaintiff of his right in
this land without impairing the obligation
of the contract?

"To deny any remedy under a contract
or by burdening the remedy with new
conditions and restrictions to make it use-
less, or hardly worth pursuing, is equally
a violation of the constitution." (1 Kent,
Com. 419.)

"It seems to me that looking at a con-
tract legally and practically, as an instru-
ment by which rights of property are
created, and on which they repose, obliga-
tions and remedies are strictly convertible
terms. Take away the whole remedy
and it is admitted the contract is gone.
And it seems to me the only logical rule
to hold, that any legislation which mate-
rially diminishes the remedy given by the
law to the creditor at the time his con-
tract is made, just so far impairs the ob-
ligation of the contract." Sedgwick, Stat.
and Common Law, 652.)

Judge Parsons, in his work upon Con-
tracts says: "That an exemption of
property from attachment (by which is
meant levy,) or a subtraction of it to a stay
law, or appraisement law, impairs the ob-
ligation of a contract." He adds: "Such
a statute can be enforced only as to con-
tracts made subsequently to the law."

"Under these cases it has at length be-
come definitely settled that a State law
which impairs the obligations of a con-
tract, whether that contract be found in
the express terms and conditions of the

written contract between the parties, or is
engrafted upon the contract by the law of
the land, as it existed at the time the con-
tract was made, is within this prohibiting
clause of the Federal Constitution, as
well also as all laws aimed or nominally
directed to the remedy, when they so af-
fect the remedy as to impair the right it-
self." (Smith's Com. on Stat. and Const.,
Conn., 395.)

Judge Story, in his great work upon
contracts, remarks: "The
obligation of a contract, when it is
enforced by the law, is not a mere
means known and acknowledged by
municipal law to enforce it. Where all
such means are denied, the obligation of a
contract is understood to be impaired,
though it may not be completely annihi-
lated."

An act of the Legislature of Vermont,
releasing the body of a debtor from im-
prisonment, and directing that the bond
which he had given to the sheriff for his
personal liberties, and which the sheriff had
assigned to the creditor, should be dis-
charged, was held by the Supreme Court
of that State to be void. (4 Chit. Rep.,
257.)

Statutes of limitations which do not al-
low a reasonable time after their passage
for the commencement of suits on exist-
ing causes of action are unconstitutional.
(Call vs. Hagger 8 Mass. 439; Proprietors
of the Kennebec Purchase vs. La-
bonel, 2 Green, 294; Blackford vs. Fel-
tner, 1 Blackford R. p. 36.)

Any statute passed after a contract
made extending the time of replevin on a
judgment rendered on such contract, is
void. (McKinney vs. Carroll, 5 Mowr.
98; Grayson vs. Lilly, 7 Mowr. 11; Lap-
ley vs. Brashear, 4 Litt. 53; Blair vs.
Williams, 4 Litt. 34.)

A statute of Kentucky directing sales
under decree in chancery on a longer
credit than at the date of the contract, was
declared by the Appellate Court of that
State to be void. January vs. January,
7 Mowr. 544.)

The statute of 1842 in New York ex-
empting certain property from sale on
execution, is unconstitutional in relation to
executions issued on judgments rendered
prior to its passage. Danks vs. Quacken-
bush, 3 Denio, 594.

The Legislature can pass no law inter-
fering with vested rights, or transferring
them against the owner's consent.
(8 Smedley & Marshall, Wis. Rep. 9.)

In the State vs. Carew, Chief Justice
Dunklin in a learned and exhaustive op-
inion decided that the stay law of South
Carolina was unconstitutional, on the
ground that it impaired the obligations of
the contract, and all the chancellors and
judges concurred with a single exception.
In Ogden vs. Saunders, 12 Wheaton,
p. 218, the court said: "The obligation of
a contract as spoken of in the constitution,
is a legal and not a moral obligation. It
is the law which binds the party to per-
form his undertaking. The obligation
does not arise or subsist in the contract
itself *proprio vigore*, but in the law ap-
plicable to the contract; and this law is
the universal law of nations, but it is the
law of the State where the contract is
made. Any law which enlarges, abridges
or in any manner changes the intention of
the parties, resulting from the stipulation
in the contract, necessarily impairs it."

Again, in the same case, it was said
the great principle intended to be estab-
lished by the constitution, was the inviolability
of the obligation of contracts, as the ob-
ligation existed and was recognized by the
laws in force at the time the contracts
were made. Whether the law professes
to apply to the contract itself, or to regu-
late the remedy it is equally within the
true meaning of the constitution, if it in
effect impairs the obligation of existing
contracts.

In Green vs. Biddle, 8th Wheaton, 391,
the court said: "A right to land includes
the right to enter upon it, and to recover
possession where withheld. Nothing
could be more clear upon principles of law
and reason than that a law which denies
possession of it when withheld by an-
other person, or elogs his recovery of it,
impairs the value of the thing recovered."
And it is in this sense that the law is
said to impair the right to an interest in the
property. If the remedy afforded be qual-
ified and restrained by conditions of any
kind, the right of the owner may indeed
subsist, but it is impaired and rendered
insecure according to the nature and ex-
tent of such restrictions."

In Bronson vs. Kinzie, 1st Howard,
311, the venerable Chief Justice Taney
said: "Whatever belongs merely to the
remedy may be altered according to the
will of the State, provided the alteration
does not impair the obligation of the con-
tract. But if that effect is produced, it is
immaterial whether it is done by acting on
the remedy, or directly on the contract
itself. In either case it is prohibited by
the constitution."

It is manifest that the obligation of a con-
tract, and the rights of a party under it,
may, in effect, be destroyed by denying
a remedy altogether, or may be seriously
impaired by burdening the proceedings
with new conditions and restrictions, so as
to make the remedy hardly worth pursu-
ing."

Citing Mr. Justice Blackstone: "The
remedial part of the law is so necessary a
consequence of the declaratory and direc-
tory parts, that laws must be very vague
and imperfect without it, for in vain would
rights be declared—in vain directed to be
observed, if there were no method of re-
covering and asserting those rights."

"It is that part of the municipal law,"
resumes the Chief Justice, "which pro-

vided that a statute of Illinois, which
provided that property levied on under an
execution should not be sold unless two-
thirds of its value was bid therefor, was
void."

The facts in this case show that the
judgment was rendered more than a year
before the passage of the Homestead Law,
that the only real estate owned by the
defendant is the tract of land containing
about four hundred acres levied on; that
the Homestead Law was passed after the
judgment was rendered, and although
the Homestead Law is not a law aimed at
the remedy, it is a law aimed at the ob-
ligation of the contract, and the obligation
of the contract is thereby impaired.

The judgment was by law a contract,
a lien, a contract. Had the State the
constitutional power to divest the
plaintiff of his rights and vest them in the
defendant?

Upon the principles involved in this
case, there is no difference between liens
by mortgage and by judgment. The for-
mer are specific, the latter general, but
both are vested, legal rights, entitling the
holders to a sale of the property, or so
much thereof as will be sufficient to sat-
isfy the demand.

In my judgment, so much of the act of
the General Assembly as exempts any
portion of the land levied on from sale un-
der this execution, is in conflict with the
Constitution of the United States, and
void.

It is therefore ordered that the sheriff
proceed to sell the property levied upon
and advertised for sale in this case, with-
out regard to the provisions of the law in
relation to the homestead passed since the
rendition of the judgment, and that he ex-
ecute the process of the court, enforcing
the judgment according to the remedy ex-
isting at the time of the rendition of the
judgment and the making of the contract
between the parties.

R. B. CARPENTER,
Circuit Judge.
January 29, 1869.

MISCELLANEOUS.

From the Wilmington Journal.
A MYSTERY UNRAVELED—MON-
EY FOUND.

BLADENBORO, N. C., Feb. 10, 1869.
Messrs. Editors:—A very curious cov-
ery has lately been made in a small
town situated in Big Swamp, about six or
seven miles from this place, the particu-
lars of which are as follows:

About sixty years ago there lived, about
a half a mile of this place, an Englishman,
who was known among the settlers by the
name of Elias Hugo. His first appear-
ance into this region was in the spring of
1806, then apparently in his thirty-eighth
or ninth year, and although his language
and bearing denoted that he had been ed-
ucated, yet his hard brown features bore
unmistakable evidence of a hard spent
life. He was, it appears, somewhat above
the ordinary size, and finely proportioned,
presenting as fine a specimen of manhood
as eye could wish to look upon. His
manner was somewhat reserved and tacit-
urn; his countenance, though a little
baggard, would at once convince the be-
holder that he was no ordinary individual.
Why he should seek a life so cheerless
clouded was a mystery often spoken of by
his neighbors. Yet, seemingly determind
to cut himself off from the society of his
fellow men, he proceeded to erect a cabin
for himself in this dimly secluded spot,
where, he said, when once deliberat-
ing on the vicissitudes of life, and the
scenes through which he had passed, he
earnestly hoped to pass his remaining
years in perfect solitude.

The cabin fronted the swamp, and from
its front door with its frail steps, led a
narrow walk to the swamp; thence, in a
westerly direction, led a narrow track to
the inlet. His furniture consisted of a
chair, a bench, a rough pine table, a mat-
tress, a bucket, and one or two cooking
utensils.

Here, in this secluded abode, alone and
unmolested, he lived the mysterious stranger
until the 13th of May, 1809. On that
day, as he was about to rise, he exhaled
the dew drops that glistened the forest leaves,
Elias Hugo breathed his soul into the
hands of the immortal power that gave it.

After the death of Hugo, strange stories
were told of a specter that was seen, and
of strange sounds that were heard about
the house and premises, and so deeply
did a superstitious dread of the place take
hold upon the minds of the settlers that
the cabin was permitted to decay and fall
as did its mysterious occupant.

Not long since, however, the place fell
into the possession of other parties, Mr.
Joel H. Ester and son. A clearing away
of the remains of the old cabin was at
once deemed necessary by the owners,
and to this purpose they applied them-
selves vigorously. They had not pro-
ceeded far, however, before they discov-
ered, on raising the floor, a small tin box
snuggly encased in the base of a chimney,
under the hearth. They were not long in
knowing its contents, as you can well im-
agine. The box is some eighteen or twenty
inches square, and made of very thick
tin. It contained a copy of Raphael's
Madonna, to which was attached a small
cross, a razor, which has the initials "H. H."
nicely engraved on the handle, and the
following letter, which reveals the secret
of the discovery of the box with nine hun-
dred lives, which was made about three
weeks ago, on the inlet referred to in the
commencement of my letter.

"BLADEN Co., May 11, 1809.
SAMUEL W. HUGO,
39 Chesapeake, London, England.
My Dear Brother—This is perhaps
the last address I shall ever send you—

Before to-morrow's sun has set, I shall be
in a spirit world, marching in the holy and
wonderful company of the Holy Souls,
who for the honor of Christ and the Holy
Mary despised the things of the world.

Even now I feel as if the fountain of life
were drying up. (Then in a trembling
hand) Come to America, as I signed
years ago in my letter. I have buried
all my money, I brought with me, amount-
ing to many an million, and should have
been able to purchase a small island
near by, the direction to which I have
already sent you. The amount is con-
tained in seven different boxes, and buried
in separate places on the inlet.

Your affectionate brother,
(Signed) ELLIAS HUGO.
SNEBBOR.

THE OLD WIFE'S KISS.

The funeral services were ended, and
as the voice of prayer ceased, tears were
hardly wiped from wet cheeks, and long
drawn sighs relieved suppressed and cho-
king sobs, and the "mourners prepared to
take leave of the corpse."

It was an old man who lay here, reposed
for the grave. More than three score
years had whitened those locks, and stiff
lankiness weary of life's journey, and the
more willing to find down and rest where
weariness is no longer a burden. The aged
had but few to weep for them when they
die. The most of those who would have
mourned their loss have gone to the grave
before them; harps that would have sig-
gled sad harmonies are shattered and gone;
and the few that remain are looking glad-
drew rather than to life's closing goal,
are bound to, and living in the generation
rising, more than the generation depart-
ing.

Youth and beauty have many admirers
when living—how many mourners when
dying; and many tearful ones bend over
their coffin clay—many sad hearts fol-
low in their funeral train. But ago has
few admirers, few mourners.

This was an old man, and the circle of
mourners was small—two children, who
had themselves passed the middle of life,
and who had children of their own to care
for and be cared for by them. Besides
these, and a few friends who had seen and
visited him, he had no near and dear
relatives left to him, and he was, there-
fore, none other to shed a tear, except
his old wife. And of this small company
the old wife seemed to be the only heart
mourner. It is respectful for his friends
to be sad a few moments, till the service
is performed and the hearse out of sight.
It is very profitable and suitable for chil-
dren who have outgrown the fervency and
affection of youth to shed tears when an
aged parent says farewell, and lies down
to quiet slumber. Some regrets, some re-
conciliation of the past, some transitory
griefs, and pangs are over. Not always
so. But often how little true genuine
heart-sorrow there is.

The old wife arose with difficulty from
her seat, and went to the coffin to look
her last look—to take her last farewell—
Through the fast falling tears she gazed
long and fondly down into the pale un-
conscious face. What did she see there?
Others saw nothing but the rigid features
of the dead; she saw more! In every
wrinkle of that brow she read the history
of years. From youth to manhood, from
manhood to old age; in joy and sorrow,
in sickness and health—it was all there;
when those children who had not quite
outgrown the sympathies of childhood
were infants lying on their bosom, and
every year since then—there it was!

To others, those dull, mute monitors were
unintelligible; to her they were the alpha-
bet of the heart, familiar as household
words.

And then the future? "What will be-
come of me? What shall I do now?"—
did not say so, she did not say anything,
but she felt it. The prospect of the old
wife is clouded. The home circle is bro-
ken; never to be re-united; the vision of
the hearthstone is scattered forever. Up
to that hour there was a home to which
to which the heart always turned with
fondness. But the magic is sundered—
the keystones of that sacred arch is fallen,
and home is nowhere this side of heaven.
What, children! be a pensioner upon their
kindness, where she may be more of a
burden than a blessing; so, at last, she
thinks. Or, shall she gather up the scat-
tered fragments of that broken arch, and
make them her temple and her shrine; sit
down in her shrill solitude beside its ex-
piring fires, and die? What shall she do
now?

They gently crowded her away from
the dead, and the undertaker came for-
ward with the coffin lid in his hand. It
is all right and proper—of course—it must
be done; but to the heart of the mourner
it brings a kind of shudder—a thrill of
agony.

The undertaker stood for a moment
with a decent propriety, not wishing to
manifest rude haste, but evidently desir-
ous of being as expeditious as possible.—
Just as he was about to close the coffin,
the old wife turned back, and, stooping
down, imprinted one long last kiss upon
the cold lips of her dead husband, then
staggered to her seat, buried her face in
her hands, and the closing coffin hid him
from her sight forever!

That kiss! Fond token of affection,
and of sorrow, and memory, and farewell!
I have seen many kiss their dead—many
such seals of love upon cold lips—but
never did I see one so purely sad, so sim-
ply heart-touching and hopeless as that!
Oh, if I had hope, it was that which looks
beyond coffin and charnel house, and

in a spirit world, marching in the holy and
wonderful company of the Holy Souls,
who for the honor of Christ and the Holy
Mary despised the things of the world.

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were drying up. (Then in a trembling
hand) Come to America, as I signed
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her last look—to take her last farewell—
Through the fast falling tears she gazed
long and fondly down into the pale un-
conscious face. What did she see there?
Others saw nothing but the rigid features
of the dead; she saw more! In every
wrinkle of that brow she read the history
of years. From youth to manhood, from
manhood to old age; in joy and sorrow,
in sickness and health—it was all there;
when those children who had not quite
outgrown the sympathies of childhood
were infants lying on their bosom, and
every year since then—there it was!

To others, those dull, mute monitors were
unintelligible; to her they were the alpha-
bet of the heart, familiar as household
words.

And then the future? "What will be-
come of me? What shall I do now?"—
did not say so, she did not say anything,
but she felt it. The prospect of the old
wife is clouded. The home circle is bro-
ken; never to be re-united; the vision of
the hearthstone is scattered forever. Up
to that hour there was a home to which
to which the heart always turned with
fondness. But the magic is sundered—
the keystones of that sacred arch is fallen,
and home is nowhere this side of heaven.
What, children! be a pensioner upon their
kindness, where she may be more of a
burden than a blessing; so, at last, she
thinks. Or, shall she gather up the scat-
tered fragments of that broken arch, and
make them her temple and her shrine; sit
down in her shrill solitude beside its ex-
piring fires, and die? What shall she do
now?

They gently crowded her away from
the dead, and the undertaker came for-
ward with the coffin lid in his hand. It
is all right and proper—of course—it must
be done; but to the heart of the mourner
it brings a kind of shudder—a thrill of
agony.

The undertaker stood for a moment
with a decent propriety, not wishing to
manifest rude haste, but evidently desir-
ous of being as expeditious as possible.—
Just as he was about to close the coffin,
the old wife turned back, and, stooping
down, imprinted one long last kiss upon
the cold lips of her dead husband, then
staggered to her seat, buried her face in
her hands, and the closing coffin hid him
from her sight forever!

That kiss! Fond token of affection,
and of sorrow, and memory, and farewell!
I have seen many kiss their dead—many
such seals of love upon cold lips—but
never did I see one so purely sad, so sim-
ply heart-touching and hopeless as that!
Oh, if I had hope, it was that which looks
beyond coffin and charnel house, and

damp, dark tombs, to the joys of the home
above. Would you kiss the cold cheek
of infancy; there is poetry; it is beauty
hailed; there is romance there; for the
faded flower is still beautiful! In child-
hood the heart yields to the stroke of sor-
row; but recoils again with elastic faith,
buoyant with hope. But here was no
beauty, no poetry, no romance. The heart
of the old wife was like the weary
man, whose strength has often failed,
when the steady waves have rolled
in, since amidst the surge,

Why should the old love the old, or kiss
the old, unloving lips? Ah! why shouldn't
they? Does affection grow old? Does
the true heart feel infirmity of years?—
Does it grow old when the step becomes
unsteady, and the hand hangs down?

Who shall say that the heart of the
old wife was not as young and warm as in
those earlier and brighter days, when her
wooded and won her? The temple of her
early hopes had fallen; and what was
left for her but to sit down in despon-
dency; among the lonely ruins, and
weep and die. Or, in the spirit of better
hope, await the dawning of another day,
when a hand divine shall gather the sac-
red