

SOUTHERN CITIZEN, & MAN OF BUSINESS.

BY BENJAMIN SWAIN.

WHAT DO WE LIVE FOR, BUT TO IMPROVE OURSELVES AND BE USEFUL TO ONE ANOTHER?

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**SOUTHERN CITIZEN,
AND MAN OF BUSINESS.**
BY BENJAMIN SWAIN,
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Man of Business.

INSURANCE OF THE LAW REQUESTS TO SAY

ASHBOROUGH, N. C.

Saturday, Jan. 14, 1837.

HOW TO PROVE CHARACTER IN COURT.

Every person is liable to be called upon in court at some time or other, to give evidence as to the character of a neighbor or acquaintance; which often subjects the fortitude and the sensibility of a discreet person to a very severe and disagreeable trial. The embarrassment generally observed on these occasions is partly (not wholly though) owing to two causes. First, the imprudence of counsel, in asking improper questions; and secondly, the confined idea that the people usually have of the precise requisitions of law, as to this species of evidence.

The first question ought invariably to be—"are you, or are you not, acquainted with the general character of—?" or "as to this effect; which you must answer with great caution. It frequently happens that after a witness has answered in the affirmative, and goes on to express what that general character is. It turns out on the cross-examination, that he has only been giving his own private opinion, as to the good or bad disposition of the person in question; which is not only not a legal testimony, but invariably subjects the witness, who expresses himself thus unguardedly, to public ridicule; and sometimes exposes him to the unadvisedness of counsel; or the court, hard to be borne. This is usually observed in what is called an *improper*, or a *swift* witness. On the other hand, a witness is sometimes found on the opposite extreme—unaccountably reserved. When questioned on his knowledge of general character, knows nothing about it, whether good or bad; or he it must be obvious, from all attending circumstances, that the fact inquired after, is one of his every day's cognitions. Now, whether this unbecoming reserve proceeds from prejudice or partiality, or from being ignorant of his duty, or from want of fortitude to do promptly what he is required to do—is immaterial, as to the effect: for the benefit of his testimony is lost when, at the same time, a fellow citizen had a legal right to it.

The subject matter of character is not confined to one or a few particulars of human conduct; but may well embrace every habit that becomes notori-

ous, be it good or bad, provided the occasion require it. Some people, from youth and inexperience, others from still and retired habit, have acquired no character at all; at least none that is susceptible of a definite description. And indeed there are many whose virtues and vices, taken together, are so mixed up together, that it is difficult to say which has the preponderance in public estimation. But the character of these is hardly ever attempted to be either attacked or supported in courts of justice. For it usually is found to have no other tendency, than to expose the feelings of individuals, without making the matter of right either better or worse. Counsel should never attack, or attempt to support the character of a witness or a party, unless it is known to be indisputably bad or good. And when it is thus circumstanced, any familiar acquaintance, living in the neighborhood, must be a stupid witness not to know it.

Clients too often seek to indulge the gratification of their malice towards an adversary or an unfriendly witness, by attempts on character, which are not expected to be effectual in any other way, than in the exposure of personal feeling. But this disposition must, and will as a matter of course, be promptly met, and totally discountenanced, by every honorable minded practitioner, who regards the dignity of the profession, as the only preservative of that profound and universal respect, which is due to our courts of justice.

Let a witness, when called on as to character, answer the first question understandingly and correctly—then he will have no further difficulty. If he does not in fact know the character, (that is, what is said and apparently believed, by a majority of those acquainted with the person in question,) he will say so; and no further question can be asked, or any further statement required. If, on the other hand, he does know it, he must be conscious of the fact, and will proceed without prejudice or partiality, to state promptly what it is, just as he would make a simple statement of any other fact within his knowledge, not advancing any private opinion of his own as to personal merit or demerit, except such as he knows to be founded on public sentiment. We need scarcely remark, that it is no less a *moral perjury*, to express a falsehood, or suppress the truth, in matters pertaining to character, than in stating on oath the existence of any other species of facts. Yet it is rather to be feared, that the difficulty of detecting *legal perjury* in this species of evidence, has led some to fancy themselves under less responsibility, than if called on to testify as to the existence of other facts.

It may be of use to remark further, that questions of character, as presented in courts of justice, are usually confined to the *veracity* of witnesses. And any thing in legal evidence that goes to evince a want of moral restraint in the person to be discredited. It is not necessary that he should be proved to be in the constant practice of *telling*, or *swearing* lies. One single act of the kind, that is, if he has, to public knowledge and belief, either *told*, or *swore* a falsehood, willfully and corruptly, in a point material, it is, in legal estimation, sufficient to discredit him before a jury of the country, unless there be evidence also of his reformation, and that he has retrieved his character.

The only way to bear a black-guard, is to *beat* a retreat.

POINTS OF LAW.

1. The Sheriff of Jones County had levied an execution on a slave, and had taken the property into possession. The Sheriff of Lenoir claimed the property under a *prior levy*; and brought an action of trover to recover it. On the trial of the cause before Judge Strange, the plaintiff offered to prove his property by the endorsement of the levy, that he himself had made on the Execution. This evidence was objected to; but the court admitted it; and the plaintiff recovered. The Supreme Court on an appeal, affirmed the Judgment. Hall Judge—"The levy endorsed upon the execution was an official act of the Sheriff and one which it was his duty to make. But it was an act *in pais*," (which means, done in the Country, or out of Court,) "and the truth of it might be impeached by evidence from the other side. It was the plaintiff's interest to establish a seizure, or a levy in fact. But in the absence of such proof, the endorsement of a levy, or any legal circumstantial evidence which tended to the same end, was competent.—2. Dev. 10.

2. Question by a Subscriber.—"Is a contract made on Sunday, binding between the parties?"

Answer.—It is no less binding, than if made on any other day, provided it be purely a contract between private individuals, in their personal character, altogether unconnected with the service or observance of *judicial process*. Sunday is not a *judicial* day to any intents or purposes, except as to the running of time. When any certain number of days notice, &c. are required, it is usual to count this day in the number, unless it is specially excepted by the words of the statute. But if an official bond, a bail bond, a prosecution bond, a ca. sa. bond, or any other contract connected with legal proceeding, be entered into on Sunday—*it is void*. And by making a civil contract of any description on that day, although such contract is binding, and can be enforced at law, yet the contracting parties are subject to a forfeiture of one dollar each, for every such offence. For the method of procedure, *supra*, &c. see "Man of Business," 1st vol. 187—2nd vol. 414.

3. Question by a Subscriber.—"Is it always to be understood as a rule of law, that whatever is said in the presence of a party, and not contradicted by him, is to be taken as admitted?"

Answer.—To be fully satisfied on this point, you have only to read with attention, the "Man of Business," 1st vol. 174—2nd vol. 20—21. It is deemed unnecessary here to repeat what is there said on the subject.

Despatch.—We were yesterday, says the New York Gazette, an eye-witness to a specimen of despatch, which, had it not fallen under our own inspection, we should have been sceptical in believing. It was the operation, at the Fair of the American Institute, of reducing wheat in straw, to baked bread in ten minutes. The process was as follows.—Twelve bundles of straw were placed in a machine in the garden, which came out threshed in a minute and a half; the winnowing was effected in a minute; the grinding & bolting occupied a minute and a half; the dough was kneaded and the cakes formed in two minutes. The whole contents of the twelve bundles were placed in

kitchen range and came out thoroughly baked in four minutes—making, in the whole, ten minutes.—The cakes were distributed round, and they only wanted the aid of a cooler, and a few pounds of Goshen butter, to have been swallowed in another minute without the aid of mastication.

POST MASTER GENERAL'S REPORT.

We find it impossible, at this time, to insert the interesting documents in full, which proceed from the Departments of the General Government, as matter most interesting to our State, claims the first attention. We therefore, avail ourselves of the following synopsis of the excellent report of the Post Master General, from the Delaware Gazette and Watchman.—Standard.

A late number of the Globe, contains the report of Mr Amos Kendall, from the Post Office Department, which is brief, but exhibits a state of things in that Department, flattering and prosperous far beyond any thing, that could have been anticipated. The untiring perseverance, and industry of Mr. Kendall, was well known before his appointment to this very arduous situation, and the reformation he has effected in the most complicated of all the Departments, proves that there has not been a better Post Master General since the organization of our government. Within the last year, the annual transportation, including the express mail, has been extended upwards of 4,000,000 of miles, and the number of Post Offices increased, near 1,000. The revenue of the Department for the last year, has amounted to \$3,391,355 19, and total expenditures to \$2,755,623, 75, leaving a clear income within the year of \$642,831 43. The bank debt, that had accumulated during Mr. Barry's administration, was entirely paid off on April last and Mr. Kendall has now a surplus of more than half a million, beyond all claims against the Department.—Thus has the great *bug-bear* of the opposition vanished. The bankruptcy of the Post Office Department, two years ago, was the rallying word of the opposition presses, and the lever, with which they expected to overturn the administration. Mr Kendall, has disappointed their expectations and made the Department a source of revenue to the government of half a million per annum. As this however, was never the intention of government, Mr. Kendall recommends a reduction of 20 per cent, on the present rates of postage. The following are the rates of letter postage, which he has suggested.

75 miles and under	5 cents.
150 miles and over 75	10
300 miles and over 150	15
600 miles and over 300	20
Over 600 miles	25

This scale of postage, introduces the federal currency, which the Post Master General, thinks will add greatly to the convenience of the community, and reduce the labor in the general office at Washington. The report also, recommends an alteration in newspaper postage, making a gradation of three different prices in proportion to the size of the paper. Several of the editors, in the large cities have been recommending in the strongest terms, the reduction, or abolishing of postage on newspapers. On this subject, the report contains the following remarks—which are certainly just and appropriate.

The policy of reducing the rates of postage on newspapers generally, is doubted. They constitute, in weight, probably two thirds of the mails; are in many parts of the country difficult of transportation, and produce numberless failures. These considerations would be of no moment if it were really necessary that large quantities of newspapers should be transported from one end of the Union to the other, as means of instructing and enlightening the public mind; but that office can be as well performed by the local presses as by newspapers from a distance. To reduce the postage on newspapers below the actual cost of carrying them, would be to tax the correspondence of the country generally for the benefit of the large newspaper establishments in the principal cities, to the injury of all the distant and country presses.—Such a measure is not believed to be consistent with sound principle or good policy.

A law authorizing the Post Master General to make contracts with rail road companies at certain regulated prices, is strongly recommended. In relation to the express mail Mr. Kendall says:

The success of this experiment is not doubted; and the size of the mail already affords an assurance that it will produce an income more than sufficient to support it.

This mail leaves far behind all news conveyed upon rail roads, or by any other means.

It will give unprecedented activity to commercial transaction between the north and the south; New York communicates with New Orleans in half the usual time; all enterprizes are expedited; the whole intervening country and the Valley of the Mississippi will feel the impulse.

Mr. Kendall thinks it will be expedient during the year, to commence an express mail from Washington, through the western states, and also from Boston to Albany and Buffalo, and has no doubt such mails will support themselves.

LEGISLATURE.

SENATE.

Monday, Jan. 2d.—Mr. W. Bryan from the Judiciary reported the bill restoring son convicted of an infamy to the rights of citizenship, time and passed. The bill incorporating the Rockfish Manufacturing co. of Fayetteville; an act to incorporate the Franklin Tobacco co. and a bill concerning the Superior Courts of Law and Equity and for the counties of Montgomery and Anson, were read and ordered to be enrolled.

Mr. Marsteller presented to the Senate a communication from Owen Holmes, Esq. declining to accept the office of Judge of the Superior Courts of Law and Equity of this State, conferred upon him the present session; read and ordered to be referred to the Commons.

The bill to amend the several acts of the Assembly prescribing the time to pay for entries of land in this State, was ordered to be engrossed.

The Senate proceeded to the order of the day; Messrs. Edwards and J. W. Bryan were appointed to wait on the Honorable Mr. Montgomery, Commissioner for the State of S. Carolina, and invite him to the seat prepared for him in the Senate Chamber. When upon the bill entitled a "bill to confer banking privileges on the Stockholders of the Louisville, Cincinnati and Charleston Rail Road."