

# REPUBLICAN AND PATRIOT.

DEVOTED TO POLITICS, NEWS, MISCELLANEA, GENERAL INFORMATION, AND THE INTERESTS OF EASTERN NORTH CAROLINA.

VOL. I.

GOLDSBORO, N. C., THURSDAY, DEC 18, 1851.

NO. 32.

## REPUBLICAN AND PATRIOT

PUBLISHED EVERY THURSDAY MORNING, BY  
**W. B. GULICK,**  
Editor and Proprietor.

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Advertisements will be inserted at the rate of one dollar per square of fifteen lines or less, for the first insertion, and twenty five cents for each succeeding insertion.

Advertisements should be marked with the number of insertions desired, otherwise they will be continued until ordered out and charged accordingly.

Favorable contracts will be made with advertisers by the year.

Count Orders and Judicial Advertisements will be charged thirty-three and one-third per cent. higher than the foregoing rates.

All Letters and Communications on business connected with this establishment, must be addressed to the Proprietor, post-paid, in order to secure attention.

**A. MARTIN,**  
Commission and Forwarding  
Merchant,  
AND  
General Agent.  
WILMINGTON, N. C.  
November, 1851. 28 ft.

**Sash, Blinds, and Doors,**  
MANUFACTURED BY  
**ALONZO J. WILLIS,**  
AT  
**NEW-BERNE, N. C.,**

For less CASH than at any other place in the State.  
L. & W. R. Whitfield, agents at White Hall. All orders punctually attended to.  
Nov. 18, 1851. 6m.

**I. DISOSWAY,**  
DRUGS, MEDICINES,  
Paints, Oils, Dye-Stuffs,  
PERFUMERY, GLASS, PUTTY, &c., &c.,  
N W BERNE, N. C.

**EXCHANGE RESTAURANT,**  
BY  
**THOMAS HOWLE,**  
Market Street,  
a few doors below the Commercial Office, and opposite the Market House,  
WILMINGTON, N. C.  
ALSO  
Good Board and comfortable lodging. 4c  
Sept. 25th, 1851. 20-ly.

**LEWIS & W. B. WHITFIELD,**  
DEALERS IN  
GROCERIES, HARDWARE, STAPLE AND  
FANCY GOODS,  
PRODUCE BOUGHT AND SOLD.  
WHITE HALL, N. C. Apr. 3, 1y

**JOSEPH HOUSE,**  
DEALER IN  
GROCERIES, HARDWARE, STAPLE AND  
FANCY GOODS.  
PRODUCE BOUGHT AND SOLD.  
SNOW HILL, Apr. 3, 1y

**CHADBOURN & HOOPER,**  
GENERAL COMMISSION MERCHANTS,  
AND  
FORWARDING AGENTS,  
NORTH WATER STREET,  
WILMINGTON, N. C.  
Sept. 1, 1851. 17-ly.

**C. MEYERS,**  
MANUFACTURER AND DEALER IN  
HATS, CAPS, UMBRELLAS,  
And Walking Cans of every Description,  
WHOLESALE AND RETAIL,  
North Side Market Street,  
WILMINGTON, N. C.  
N. B. Country Merchants supplied at New York wholesale prices. Oct. 24, 1y

**JOSEPH H. FLANNER,**  
General Commission Merchant,  
WILMINGTON, N. C.  
Liberal cash advances made on consignments for sale or shipment. Apr. 29 1y

**WILKINSON & ESLER,**  
CASH DEALERS IN  
Confectionary, Fruits, Nuts, Toys, Fancy Articles,  
Perfumery, Soaps, Segars, &c.,  
WHOLESALE AND RETAIL,  
Market Street,  
WILMINGTON, N. C. Mr. 13, 1y

**WASHINGTON & LaFAYETTE  
HOTEL,**  
DAVID THALLY, Proprietor.  
OPPOSITE CAPE FEAR BANK,  
Front Street,  
WILMINGTON, N. C. Mr. 13, 1

**J. M. ROBINSON,**  
IMPORTER AND DEALER IN  
Hardware, Iron, Stoves, Nails, &c.,  
Front-st., 3 doors South of Market Street,  
WILMINGTON, N. C. Apr. 3, 1y

**SCOTT & BALDWIN,**  
DEALERS IN  
SUPERIOR READY MADE CLOTHING,  
Market Street,  
WILMINGTON, N. C. Apr. 3, 1y

**ARE YOU GOING TO WILMINGTON?**

If you do, call at Scott & Baldwin's, and examine their new and splendid assortment of  
**FALL & WINTER CLOTHING,**  
all of their own manufacture.  
Leave your measure if you want the finest Coat, Pants or Vest, that can be made in the State.  
Wilmington, Oct. 23, 1850. 24 ft

**OIL AND VARNISH**—Lined Oil, raw and boiled, Turpentine, Train, Neats Foot, Winter Strained, Olive, &c. &c. Coach, Japan, Furniture, Leather and Grate Varnish, for sale by  
I. DISOSWAY.

**WHITE AND BLACK LEAD,** French Ochr and Venetian Red, together with a general assortment of articles in this line, for sale by  
I. DISOSWAY.

## NEW MILLINERY GOODS.

**Fall Importations.**  
MRS. McDONALD will be glad to see her friends at her old stand, where she is now exhibiting for sale, a large assortment of Millinery Goods, of the latest styles and best materials, suited to Fall and Winter, which have been selected with great care.

Orders executed with neatness and dispatch. Dresses and Cartrills made. Bleaching and pressing done in the best style at short notice.  
New-Berne, Nov. 13th, '51. 27-4f.

**GEORGE BISHOP,**  
CABINET MAKER  
AND  
UNDERTAKER,  
MIDDLE STREET, A FEW DOORS SOUTH OF THE COURT-HOUSE.

KEEPS constantly on hand an assortment of Furniture, Mahogany, Cherry, Walnut, Poplar, White and Yellow Pine Lumber. Repairing of every description executed at the shortest notice by  
MR. PHAROAH LEWIS, a well known and experienced workman.

**SASH AND BLINDS MADE TO ORDER.**  
Undertaking. Having a new and splendid Hearse, with an assortment of appropriate Trimmings, no pains will be spared in giving to the dead a decent interment. Terms moderate.  
New-Berne, July 25th, 1851. 9-1y.

**Inspector's Notice.**  
THE Subscribing at the last Term of the County Court having been appointed an Inspector of NAVAL STORES,

would respectfully inform the public that he will at all times be ready to receive them in that capacity. He would also suggest, that having been engaged for many years in making the article himself, and having it made, he is sufficiently qualified for his office, and will be grateful to those who may employ him. He can always be found either at the said Town of New-Berne Job Printing Office, or at George W. Taylor's Store.

JOSEPH R. FRANKLIN.  
New-Berne, June 30th, 1851. 8 ft.

**DAUERRETYPE PORTRAITS.**  
THE undersigned would respectfully inform the citizens of New-Berne, and the public generally, that he has completed his

**New Gallery,**  
where he is prepared to take pictures of a superior style, and at lower rates than has ever been taken in this place. He pledges himself to take true copies of the original, and warrants to give satisfaction or no charge.

COPIES OF DAUERRETYPES  
taken and enlarged. Having the largest sized Camera and the best stock, he feels satisfied that he can please any who will favor him with a call. Pictures of Children taken from one year old and upwards.

**Miniature Paintings**  
Gallery on the east side of Craven street, four doors south of the Bank of the State, and adjoining his Jewelry Store. Entrance, passage door.  
Ladies and Gentlemen please call and examine specimens.  
E. FEIGUSON.  
New-Berne, April 14th, 1851. 1 ft

**NEW-BERNE AND NEW YORK  
LINE OF PACKETS.**  
WILL run regularly in line between this port and the port of New York, if sufficient inducements offer, after the 15th November next.  
Schr. RHODE ISLAND, 900 barrels capacity, two years old, Capt. Fairchild, will leave here on or about 15th November.  
Schr. CONNECTICUT, 1200 barrels capacity, three years old, Capt. S. Fairchild, will leave on or about 25th November.  
Schr. FRANCES A. GODWIN, 1500 barrels capacity, two years old, Capt. Carlisle, on or about 5th of December.  
Country Distillers and others who ship regularly by this line shall have the preference over other shippers.  
For charter, freight or passage apply to  
RICHARD N. TAYLOR,  
Old county wharf  
ew-Berne, Oct. 22nd, 1850. 1y

**NOTICE.**  
THE regular convocations of Eureka Chapter, No. 7, of R. A. Masons, will be held on the first Monday of every month, at early candle-light, until further notice is given.  
R. A. M., 2381.  
E. R. STANLEY, Sec'y.  
Newberne, Sept. 11th, 1851. 18-6m.

**FOR COUNTY TRUSTEE.**  
Messrs. Robinson & Gulick—You will please announce me as a candidate for the Office of County Trustee at the election to be held by the Magistrates of Wayne at the next February term of the Court.  
THOMAS EDWARDS.  
Wayne county, Nov. 18, 1851. 25 ft.

**\$100 REWARD.**  
THE subscriber will give the above reward for the arrest of, and confinement in any jail in this State so that he can get them, his two negro men, Bob and Curtis, whom he purchased of G. L. Korngay of this County; or he will give Fifty Dollars for either of them on the above conditions. These fellows were in the woods when he bought them, and are supposed to be still lurking about in the Country, especially in their old neighborhood.  
GEO. A. DUDLEY.  
Goldsboro', Oct. 1851. 24 ft

**TAKEN UP.**  
WAS taken up and committed to jail, on the 6th of last September, as a runaway, a negro woman named Joanna who says she belongs to Washington Hooks, of Tennessee.  
Said Joanna is about 22 years old, over common size, light complexion, and about 5 feet 6 inches high. She formerly belonged to Mrs. Ford of this County.  
The owner is requested to come forward pay charges and take her away or she will be dealt with as the law directs.  
OLLIN COOR, Sheriff.  
Wayne county, 15th Nov. 1851. 28 ft.

**A RARE CHANCE  
FOR A  
GOOD INVESTMENT**  
IS now offered by the subscriber, who wishes to dispose of his well known House and Lot in New-Berne, 252 and 253, Broad Street.  
The Lot is occupied as a Boarding House and Store. There is also a house occupied as a sleeping house with 8 commodious rooms.  
Also, a Cart-house and stable, well calculated to accommodate forty Carts and Horses.  
Any person wishing to purchase will do well to call soon and examine for themselves.  
L. B. HUGGINS.  
New-Berne, November 26th, 1851. 29-4f.

**THOMPSONIAN MEDICINES.**—A complete assortment, just received and for sale at  
L. DISOSWAY'S 19

## Everettsville Female Academy.

THIS Institution will be continued under the superintendence of the Rev. Mr. Smyth, assisted by competent Teachers in all the branches requisite for a finished education.

The next session will commence on the 1st of January, 1852.

The Academy is furnished with Philosophical, Chemical and Astronomical apparatus.

Two or three boarders in addition to those already engaged can be accommodated in the family of the Principal; but board can be procured on very reasonable terms in families of the highest respectability in the village.

For terms, &c., application may be made to John Everett, Secy., Treasurer, or Rev. J. Jones Smyth, Principal.  
Everettsville, Wayne Co., N. C.  
Dec. 10, 1851. 31 3m

**Dislocation.**  
THE co-partnership heretofore existing between Charles H. Harper and Oliver Murphrey, under the firm of Harper & Murphrey, in this day dissolved. Charles H. Harper will settle in the business of the firm.  
OLIVER MURPHREY.  
Snowhill, Nov. 28th, 1851. 31 3w.

**CAST Ploughs, Corn Shellers, Straw Cutters, Iron, Steel, Plough Points, Spun Cotton and Molasses,** just received by  
WASHINGTON & ANDREWS.  
Goldsboro', December 10th, 1851. 31-4f.

**NOTICE.**  
ON Monday, the 19th day of January next, at the late residence of Francis L. Cate, dec'd., in the Town of Goldsboro', will be sold the perishable property of said dec'd., consisting of Household and Kitchen furniture, &c., on the same day, at the Court-house door, in said Town of Goldsboro', several Lots, some improved, and some unimproved; also, the lot and improvements in the Town of Waynesborough, whereon the said Francis L. Cate formerly lived; also, a small part of a lot in said Town of Waynesborough, unimproved.  
Six months credit will be given; Notes and approved security required.  
WM. K. LANE, Adm'r.  
Dec. 3rd, 1851. 30 6w

**NOTICE.**  
THE subscriber, having at November Term of the Court of Pleas and Quarter Sessions, 1851, held for the County of Wayne, taken out Letters of Adm'r. herby gives general notice to all persons indebted to said dec'd., to settle the same without delay, as indulgence cannot be given, and all those having claims against said dec'd., to present them duly authenticated within the time prescribed by law, or this notice will be plead in bar of their recovery.  
WM. K. LANE, Administrator of Francis L. Cate, dec'd.  
Dec. 3rd, 1851. 6w

**3117 Acres Pine Land  
FOR SALE OR LEASE.**  
THE Subscriber has 3117 acres of (round Pine) land equal to any in the State, lying on Linches Lake, near the mouth of Linches Creek in Williamsburg District, good navigation for flat boats, and within (5) five miles of a steam boat landing of the Pee Dee River which passes regular every week during the Winter, Spring and Fall from Charleston where provisions and other supplies can be obtained. For the Turpentine business it is a healthy location and near a wealthy farming section of the District; plenty of hoop poles convenient, and some 4 or 500 acres of the above land, all the household and kitchen furniture; one set of Blacksmith Tools; Farming Tools, and many other articles not herein mentioned. Bond with approved security, will be required, on or before the delivery of the property.  
E. W. FRUIT SMITH, Administrator.  
Nov. 29, 1851. 30 3t.

**NEW GOODS! NEW GOODS!  
Edmundson & Borden,**  
ARE now receiving and opening at their store on the corner of John and Walnut streets, a large stock of

**FALL AND WINTER GOODS,**  
consisting of a variety of every kind of Goods suited to this season. Their stock consists of

**DRY GOODS.**  
Groceries and Hardware,  
**BOOTS & SHOES,**  
HATS, BONNETS, AND UMBRELLAS,  
Ready-made Clothing, &c. &c.,  
all of which will be sold at the Lowest Prices.—Buyers will find it to their interest to call and examine their stock before purchasing elsewhere.  
Edmundson & Borden take this occasion to return thanks to their customers generally, for the patronage heretofore bestowed upon them, and solicit a continuance of their favor.  
Goldsboro', October 21, 1851. 1 ft

**Valuable Property for Sale.**  
THE Subscriber offers for sale the plantation with the improvements, whereon he now lives, containing about 200 acres; about half of which is cleared. The improvements consist of a good two story building, containing 6 large rooms with fire places in every room, and all necessary out buildings; this tract lies on the East side of Goldsboro', adjoining the town.

Also,  
One other tract known as the Borden & Hooks land, situated on the South side of Goldsboro', adjoining the said town, containing about 400 acres, a good portion of which is equal in point of productiveness to any land in Wayne county, or I might almost say, in the State, and would, if rented and well managed, always pay more than the interest on the purchase money. I have also several town lots in Goldsboro', which I would sell. I would sell any, or all of said property, and take in payment likely Young Negroes, Bonds, Notes, or would sell on a credit, for any reasonable time.  
The flourishing state of Goldsboro' is well known. Among other advantages, it affords rare facilities to parents to educate their children. There is at present, in the vicinity, as good a school—Mr. Robinson's—as the State affords, and a building for a collegiate school will be commenced in a few weeks. These considerations, and the intrinsic value of the property offered for sale, ought to make a residence and farm near Goldsboro' a desirable object, especially to parents.

For other particulars, apply to  
WM. B. EDMUNDSON.  
Goldsboro', Nov. 19 1851. 28 ft.

## From the Georgia Telegraph.

**Planters' Convention.**  
We have often heard it asserted as a political truism, that the strength and durability of the Southern States, dwelt in the planters of the country—that they were the true conservatives—the pillars on which rested its prosperity and perpetuity. How well has the action of the recent "Cotton Planters' Convention," in this city, verified the belief. The country has been doctored and dosed by politicians and demagogues, and fanatics, until it has been reduced to a state of complete marasmus, and hardly has strength and vitality enough to keep together soul and body. The action of this Convention seemed to awaken the people like a galvanic shock from their dreaming slumbers, and to arouse them at once to the true Southern policy.

We have heard but one continued expression of approbation from people of every calling, on the subject of "direct trade," as passed in the resolution of the Convention. It is a subject which the people wish unbounded, unfeared, and isolated from all political parties—they will not have it affiliated or amalgamated with political parties—but as a subject of political economy, they deem it due to the proper destiny of the Southern States, to urge on with great energy the system of "direct trade," and thus make them the wealthiest—the happiest, and the freest people on the surface of the globe.

For years past, we have depended upon the North alone for our goods. She has taken our produce—transacted our commerce—fleece our pockets—attacked our institutions—traded our social system, and deprived us of our rights. We have toiled to build up her splendid commerce, and her magnificent cities—we have conquered for her new territories, and have thrown into her lap the riches of Aladdin's lamp—we have borne in taxation the heaviest burden of government—we have been for her "hewers of wood and drawers of water;" and now, when the chance is presented to us of freeing ourselves from this infatuated bondage, and of reaping the rewards of our own industry, shall we, like the sluggard, say, "a little more sleep—a little more slumber?" Or shall we take advantage of the prevailing sentiment, and unite in a common effort to reap the reward of our toil and industry, and to surround ourselves with that strength of wealth and power, which shall make our institutions impregnable to all outward combinations?—Why should we make New York or any Northern city the *via* through which our produce shall reach its European destination? Why pay tariffs which can be saved—or commissions which should remain in our own pockets? Why enrich Northern merchants, and impoverish our own? Why build up Northern cities, when our own are dilapidated—the policy is the spawn of madness and fatuity. Let the people then join the planters in a general move to create "direct importations." Let vessels bring goods directly into Southern ports, and we then can make the exchange ourselves and thus reap the profits of the transaction—we can save that which the North now reaps from this business and with this additional wealth, we may promote internal development, and home industry in every branch and department of trade, whether Agricultural, Mechanical, or Manufacturing, and thus bring to light all the hidden stores of wealth in the South, which otherwise will slumber forever. In connexion with this subject, we think it would be wisdom on the part of our Legislature to appoint a committee to report on our lumber trade, and the capabilities of Georgia for the building of vessels—the people want statistical information on this subject. Will not the Legislature take steps to give them reliable information by the appointment of a committee for this purpose? It is the general impression, that our State in quantity and quality of ship building timber is inferior to no State in the Union, and in fact that lumber is daily shipped to the north from our shores for the purpose of building ships. If these facts be properly investigated and placed before our public, their ship building will become a fresh source of wealth, and a new arm of power, whose lever force will of itself be nearly sufficient to remove and overturn every conceivable obstruction to "Direct Trade."

The planters have set the ball in motion: will they not carry out the suggestion so frequently made by the Convention, and proceed to have firms established for direct importation to whom they will pledge their trade. If they do this as a beginning—the flood will roll on by its own inherent strength.

**EMANCIPATION OF WOMEN.**—An address was presented to Madame Kossuth by a deputation from the "Society for the emancipation of Women." In addition to an expression of sympathy, this address contained the wish that the wife of the honored hero of the day would communicate to these ladies her sentiments respecting their efforts to achieve the freedom of her sex. Madame Kossuth replied, that she thanked them heartily for this proof of their sympathy towards herself, and through her, more particularly towards her country; that with respect to her own views on the emancipation of woman, she had in earlier years confined herself to the circle of her domestic duties, and had never been tempted to look beyond it; and that the overwhelming course of events had left her, as might well be supposed, still less leisure for any speculations of this kind. It would, moreover, (such was the conclusion of her little speech,) be readily forgiven her, the wife of Kossuth, a man whom the general voice, not more than her own heart, pronounced distinguished, if she submitted herself entirely to his guidance and never thought of emancipation. The admirable pertinence of this reply will be doubly appreciated when it is mentioned that Madame Kossuth was altogether unprepared for the address of these ladies.

The San Francisco Herald, of the 1st ult., estimates the annual yield of the California mines, to be over seventy-five millions of dollars.

## From the Mountain Banner.

**THE TRIAL OF W. W. AVERY, ESQ.**

MR. EDITOR: Rumor with her thousand tongues has so distorted the melancholy affair which occurred at Morganton on Tuesday the 11th instant, that it is deemed proper to give a plain unvarnished statement of the facts of the case as they were brought out on the trial. The time and place of the occurrence, and the prominent position occupied by both the deceased and Mr. Avery, have already made it known throughout the State; and it is important that the public mind should be perfectly enlightened before its opinion is formed. I shall state the facts in the order in which they occurred, and not in the order in which they were brought out before the Jury.

Many suits were pending between Mr. Fleming and the uncle of his wife, Mr. Ephraim Greenlee, in McDowell Court. Mr. Fleming had judgments against him for a large amount. Mr. Greenlee filed a bill in Equity to enjoin the collection of the judgments, on the ground of fraud in obtaining the notes on which the judgments were founded. The injunction was granted, and Mr. Fleming took a witness, Mr. Deal, his bosom friend, and a man of excellent character to procure some testimony in reply to what the allegations contained in Greenlee's bill. After conversing with the person whom he visited to procure the testimony, on his return home, he remarked to Mr. Deal, that he had been against him before, and had frequently crossed his path, that he, Fleming had tried to insult him, and he would not resist it, and that he would be d—d if he did not cowhide him. This was ten days or two weeks before McDowell court. At McDowell court Mr. Fleming's answer was filed, denying the truth of the allegations of Greenlee's Bill; and Fleming's counsel on a motion to dissolve the injunction, commented with much severity upon the Bill. Mr. Avery, who was one of Greenlee's counsel, who had drawn the Bill, who was the only counsel present at the time, insisted that the Bill was true, and contended that the answer was not fully responsive to the Bill. It was admitted on all hands, he said nothing personally offensive to Fleming. Before the case was disposed of, Fleming left the Court House, and as he declared to various witnesses, purchased a large cowhide, put it under his coat, and waited for Mr. Avery. After attending to other business, Mr. Avery left the Court House, a short time after the Judge and other members of the Bar; at the door the parties separated, they going up street to their boarding house, and Mr. Avery down street to his, in company with his client, with a thick overcoat buttoned tight around him, and a book or books under his arm. Mr. Fleming, who had been passing to and fro for some time, met him, and Mr. Avery's client walked on, supposing Fleming intended speaking to him on business. He asked Avery if he held himself out of the Court House responsible for what he said in it. Mr. Avery replied that he advocated the cause of his client in the Court House, and desired to have no difficulty with him, and passed on. Fleming then drew the cowhide from under his coat, and said "will you fight?" and at the word fight, commenced striking Mr. Avery with the cowhide very rapidly. Mr. Avery's back being turned towards him at the time, gave him from three to six blows. Mr. Avery immediately turned, and at the first blow knocked Fleming to his hands and knees, and also a second time, as some of the witnesses thought. Fleming recovered, and with a stone in his hand, struck Avery several blows over the forehead, eye and temple, and the parties were then separated. Fleming then cursing Avery, and telling him he would fight him with any thing from the point of a pen knife to the mouth of a cannon. Avery was carried to his room. His face was very much swollen, his eye inflamed, and he evidently bewildered by the blow he had received. After bathing his wounds, he asked Dr. Erwin, his relative, to "get him some kind of arms, for he did not know what might happen before he left town." Dr. Erwin went off to his dinner, he then dressed Fleming's thumb, which had been injured, and procured a small pocket pistol and returning to Avery's room, gave it to him, remarking it was the best he could do. Avery then asked Dr. Erwin and Mr. E. P. Jones, a member of the Bar, what he ought to do, but neither of them gave him any advice. The pistol furnished was very small, and would have been useless, except in very close combat, and Dr. Erwin who was examined in behalf of the State, stated that from the injuries Mr. Avery had received he was wholly unable to engage in any kind of a combat with Mr. Fleming on that evening. After remaining in town some hour and a half, he left in his buggy for his home in Morganton.

Mr. Fleming, in the meantime, was going about over town boasting that he had cowhided Avery, and went into a shop, making the same boast; some one remarked to him, "it is a wonder two or three of them had not jumped upon you and whipped you," to which he replied, "that he was well prepared, he was well armed, and could have killed four or five of them, before they could have got to him." He boasted to several witnesses, that he had cowhided Mr. Avery—said that he would not take a thousand dollars for it.

Court at Morganton, where Mr. Avery lived, came on two weeks afterwards. In the meantime Fleming was advised not to go to Morganton, he said he had business at Morganton, and always went where he had business; that he was not afraid, for he generally could look two sides at once. On the day before the homicide he came to McDowell Court-house, and was again advised not to go to Morganton. He then procured a large Bowie-Knife, and remarked he would rather have that than a half-dozen pistols. He reached Morganton about 10 o'clock on Tuesday, after his court was called, and put up at Dr. Hapoldt's Hotel, 1-4 of a mile from

the Court-house. He was said to have been in the Court house before dinner, and was seen in a luge cove, attending a sale immediately before dinner. On neither of these occasions did Mr. Avery see him. Just at the calling of Court, Mr. Fleming was seen by a witness coming from the direction of his hotel, and crossing over the street from the enclosure which surrounded it, he met a witness, and spoke to him in a loud tone of voice, and said, "give my respects to your lady. I understand she said to you if you were to come to her after receiving a cowhiding without resenting it, she would be tempted to give you another." Several persons were standing around and near, when the remark was made. Witnesses went some fifty yards, into the lower room of the Court House, and saw Avery with a drunken client, hanging on to him, and talking to him—Avery, from his office, would have approached the Court-house in an opposite direction to that by which Fleming approached it from his hotel. The first case that was called when Court met, was one in which Fleming was a party. His counsel declared they were not ready. Avery was sitting in front of the Clerk's table to the left. Fleming started towards the Clerk's table, with his cloak on—he got almost to Avery, some ten feet from him, and several persons between them; he stopped, turned back, threw off his cloak, and then went to the Clerk's table, directly in front of Avery, and about 8 feet from him, and was seen to look at Avery. At this time there were several persons between them, and a bench about breast high and two feet wide and one or two clients were pulling at Avery, who did not see him. He remained at the table a moment, and then passed clear of the bench and persons between Avery and himself, and approached his counsel in front, instead of behind, as is usual, and leaned forward to speak to him, with his side to Avery, and about six feet from him. Avery rose up instantly, presented his pistol and fired about the time Fleming took his position. Fleming immediately rose up erect, stepped back, and fired Avery and threw his hand up to his breast; as he did this, Avery advanced, and threw the pistol at him. Col. Gaither seized Avery, and not knowing whether Fleming had been touched, carried him out of the Court House, and coming back, and finding Fleming dead, he returned to Avery, and then coming back again, announced to the Judge that Avery was in the Sheriff's room, and surrendered himself. Judge Battle then ordered him to be committed, and upon Col. Gaither's request, Mr. Avery being his nephew, and John Woodfin, Esq., was appointed in his stead. It was also in evidence that when Fleming stopped at the hotel, he sent his son, a small lad, on alone to Charleston, leading a pair of horses, telling him he would overtake him that evening, or next day, and that he took Dr. Hapoldt's, his land rd, into his room and inquired if he had heard any threats made by the Averages, and upon being answered in the negative, said he was not afraid. Fleming did not fall, until after about the time Mr. Avery was carried out of the Court-house. Upon Mr. Fleming's person was found, attached to a belt, a large and heavy Bowie-Knife, and a Dirk about one foot long, and a Revolver was found in his saddle bags, in his room at the hotel. The tall entered Fleming's left side, and passed entirely through the body, lodged against his vest on the right side. The whole affair was the work of a moment.

It was in evidence that a marked change had taken place in Mr. Avery's manner since the affair at McDowell. That his mind seemed to brood over it to the exclusion of every thing else; that on Monday and Tuesday till the slaying, he seemed unconcerned of what he was doing, made particular engagements about business and forgot them, nor could he be aroused to them.—One witness, the Rev. Benjamin Hamilton, of Rutherford county, having gone to Morganton expressly to see him on his Mr. Avery's own appointment on business, after making some ineffectual attempts to get him mind aroused to the nature of the business, left him, and returned home with the thorough conviction that his mind was disordered by the intensity of his feelings, upon the situation in which he was placed. R. C. Pearson, Esq., of Morganton, and John Burgin, Esq., and two other gentlemen of the highest respectability and intelligence, testified to the same effect. It was also in evidence, that Mr. Avery was of an exceedingly kind, peaceable and amiable disposition, and had never had a rencontre before with any one, and that Fleming had an old grudge against him. Mr. Avery was brought out of prison and arraigned on Wednesday, and his trial appointed for Friday. No offer was made on either side to remove the case or to continue it.

On Friday the prisoner was brought to the bar, and the following jury soon sworn and empanelled, to wit:

Richard V. Michaux, Philip Warlick, William Conolly jr, Wm. R. Aiken, Abram Franklin, James Estes, Stephen Wharton, Jacob Seagle, Philip Whisenant, J. L. Collins, Peter J. Walker, L. W. Melton.

The testimony was examined with great care, and when it was closed, the argument was commenced by the State's Counsel, and two of the prisoner's Counsel, N. W. Woodfin Esq., and T. R. Caldwell, Esq., addressed the jury in reply. At the request of the State's Counsel who was too unwell to finish the argument that night, the argument was adjourned over till next morning, when J. G. Bynum, Esq., concluded for the prisoner and the State's Counsel replied.

Mr. Avery's counsel contended that in all criminal cases the jury was the Judge of the Law and the facts, and while they disclaimed all desire to be understood as being wanting in respect to his Honor Judge Battle, still it was but proper that the jury should know what were their powers and what were their duties. It was admitted that every slaying was *prima facie* murder. But it was contended that this could only be manslaughter