CHEAP COLUMN.

[Advertisements under this head will be charged ten cents per line for each insertion.]

WANTS.

WANTED—To exchange several eligible city lots for improved city or Edgefield property. Apply to G. & J. at the office. dec31

FOR RENT.

STORE FOR RENT—218 Church Street. dec30 3t

FOR RENT—The place now occupied by Capt McFall, on the Charlotte Pike, two and a half miles from the city. A brick residence with five rooms, besides kitchen and servants' room, with ten acres of ground.
dec29 tf JOHN C. BURCH.

FOR RENT FOR 1871—A comfortable Brick dwelling of six or seven rooms, kitchen, etc.—very convenient to the business portion of the city. Possession given immediately. Apply at Rhea, Smith & Co's. dec29 tf

FOR RENT—The elegant new store room of Dr. J. W. Maddin, in the Lewis Block, opposite St. Cloud, Summer street. Apply at No. 9 south Cherry street. dec20 tf

LOST.

LOST—On Christmas eve night, between Maxwell House and 22 North Summer street, a Ladies' Hudson Bay Sable Cape. A liberal reward will be paid for it if left at office of the Maxwell House. dec30 1t

LOST—From Belle Meade, large Irish setter dog—color, red or dark lemon—gray about his head. Any one returning him to me or this office will be liberally rewarded. Gen. W. H. Jackson. dec29 6t

UNION AND AMERICAN

SATURDAY NIGHT.

BY HESTER A. BENEDICT.

To castle and cottage the night comes down,
With sombre vision and shady vest,
And, happily, out from the dusty town
The weary are hastening home to rest.
The day fails soft where the buds had birth,
The sunset splendor is shut from sight;
And hearts, all over the beautiful earth,
Are glad for the coming of Saturday Night.

Wild and peaceful the sweet sea lies,
Bridled with beautiful breaths of balm,
Sparkling and daring as dangerous eyes,
Languid with laughter and cruel with calm.
The winds are asleep where the bird-notes were;
And loveliest lilies that leant to the light
From slumberous solitudes, thrill as they stir
In the dusk and the dew-fall of Saturday Night.

Oh, the Saturday Night! To hamlet and hall,
Where life is lonely, or love is sweet,
It bears a tender race for all—
Repose for the brows, repose for the feet.
And the tired hes-t, and the tired brain,
Will rise from slumber afresh and new,
When morning has climbed to the hills again,
And Sabbath is bringing the dawn and the dew.

I sit and think of a happier dawn,
Then waits to gladden my yearning sight,
When, fairer than fairy and fleeter than fawn,
My life leaps free from its Saturday Night!
From the delaging dark and the ruinous rain;
From the phantoms of rest in the restless way;
With never the pulse of a passionate pain
Beating my bosom to dull decay!

And oft, when the weary have sunk to sleep,
And silence over the earth sets wong,
I watch through the night-time, heavy and deep,
For a fairer than ever an earthly dawn—
For a glimpse of the jasper bars dropped down,
And the beautiful breaks of a Sabbath Night,
That waits on the emerald hills to crown
The close of my life's last Saturday Night.

And I hear, sometimes, where the billows are
The feet of my Beautiful, gofne before,
And smile to remember it is not far
From the reach of my hands to the saintly shore,
Nor long till my kisses will cover her face,
Fair in the flood of Eternity's light—
And I shall forget in her truest embrace,
The dream and the danger of Saturday Night!

BLOOD HORSES IN TENNESSEE.

An Interesting Resume of the Blood Man and Blooded Horse.

From Correspondence of Spirit of the Times.

* * *

The Southern and Southwestern people were, and are yet essentially an agricultural people, and it is from among the planters and stock-raisers of those sections that a large majority of the turfmen of other days were to be found; and it is from those sections others must be raised up, if ever this country is to become, as it should, the home *par excellence* of the racehorse. To make racing popular, successful, and profitable the horses must be bred, trained, and run in the sections where they are raised. It was this fact which went so far, added to the natural love of the people for field and turf sports, that long rendered Virginia, Maryland, Kentucky and Tennessee so famous for the frequency, popularity, and successes of their various race-meetings. And another thing—and the most important of all—was the fact that the turfmen of those days were composed of the most respected citizens of those States—men eminent in every walk of life—the statesman, lawyer, doctor, planter, and, strange as it may seem, the divine, with at least two of whom the writer, in his boyhood days, was well acquainted, to-wit: Mr. Lewis Shirley, of Jefferson county, Ky., and Rev. Hardy M. Cryer, of Tennessee, who was a devoted lover of the race horse, and who was for a long time an intelligent and judicious breeder of thoroughbreds on his fine farm in Sumner county. A circumstance has been related at the expense of Mr. Cryer which has gone into history as a joke, but to the personal knowledge of the writer it is founded on fact. Mr. Cryer had a very fine colt, by imported Leviathan, that had been bred on shares. The fall that the colt was two years old he was taken by Col. George Elliot, a distinguished turfman and neighbor of Mr. Cryer's, who owned one half of him, with the view of having him trained. Some of Mr. Cryer's flock learned that the colt was being trained at Col. Elliot's, and that Mr. Cryer still owned an interest in him. A good deal of talk was had over the matter, which finally resulted in the appointing of a committee to wait upon their beloved pastor and learn what he had to say about the matter. After investigating thoroughly, the committees at one of their meetings made their report, in which they condemned Mr. Cryer severely: but before submitting their report to the Church authorities they agreed to take a vote of their congregation, after hearing first what defence, if any, Mr. Cryer had to make. The day arrived, and after the morning services were over the chairman of the committee rose and read his report, in which it was charged that Mr. Cryer, in connection with Col. George Elliott, was actually having a horse trained, for the purpose of being run for money, and called upon Mr. Cryer to know if he had any defence. Mr. Cryer rose, with big drops of sweat yet covering his honest face, from the effect of the eloquent sermon he had just delivered, and said he had but few words to say. He said it was true that Col. Elliott was training a colt half of which belonged to him, and he said: "Brethren, if you can make any arrangement by which my half of the colt can stand in the stable and Col. Elliott's half run on the race track, I will be perfectly satisfied." A vote was taken, and it was unanimously declared by the congregation that they had the utmost confidence in Brother Cryer, and, I may add, that he lived to green old age, and retained to the last the love and respect of his people and the fullest confidence of his church.

Long before the circumstance I have related took place, the turf had found a firm footing in Tennessee. President Jackson was at one time at the head of the turf in that State. The fame of his horse Truxton, and many others that he owned and ran, was very great. His compeers were Col. George Elliot, Gen. Desha, Gen. Sam Houston, Col. Hayne, Gen. Harding, Jesse Cage, Berry Williams, Judge Berry, Belle Peyton, Judge Guild, Wesley Malone, Isaac Franklin, Rufus J. and Lucius J. Polk, and many others not now remembered. Some of the above were on the turf during Gen. Jackson's racing career, and still live to enjoy its healthful pursuit. The horses that were about that time distinguishing themselves were Hayne's Maria, Walk-in-the-Water, and others. The former was a remarkable mare. She was a winner at all distances from a quarter of a mile to four-mile heats, and was never defeated. Her two most notable races were a race at Charleston, S. C., where she defeated the crack of that State, I believe, Transport, and her match at Lexington, Ky., where she defeated Robin Grey. Both of the above races were four-mile heats. Walk-in-the-Water was also a remarkable horse. He won twenty-six races at four-mile heats, and several others at shorter distances, and trained on until he was fourteen years old. Space will not allow me to mention other celebrities of the date I am writing about. From 1828 up to 1848 Tennessee produced a great many racehorses and legitimate racing flourished. A great deal of capital was invested in thoroughbreds, and the intelligence and wealth of Middle Tennessee were largely engaged in the sports of the sports of the turf. The most distinguished horses that appeared between 1828 and 1838 were Betsy Malone, Piano, Lilac, Angora, Jerry, The Pony, Beeswing, Othello, Scipio, Hibernia, Lauderdale, and many others not now remembered. Two of the above were first-class. Betsy Malone was a nonpareil. She won many races at long distances, was never defeated but once, when she fell and threw her rider. Beeswing was one of the finest mares that ever looked through a bridle. She commenced her racing career in Tennessee. Most of her races, however, were run further South. In her day she was invincible; she never lost a heat. It is true that in running her last race at New Orleans, after having won the first heat in 7:38, she broke down and could not be started for the second heat, and her competitor, Gray Medoc, walked over and received the purse. The above race was the first time that the "thirties" had been reached in a four-mile heat since 1832, when Eclipse and Henry ran their great match on Long Island. Beeswing absolutely ran the heat alluded to above on three legs, as she was very lame before starting. I have no doubt but what she could have run four miles on a good track when in good condition in 7:25. From 1838 up to 1848 was the golden era of racing in Tennessee; indeed, it was the golden era of racing in America. In that decade there appeared upon the turf a larger number of first-class horses than any twenty years before 1838, or any twenty years since 1848, and there was more money run for in stakes, matches and purses than had been run for in twenty years before 1838 or since 1848. It was in the decade that I am writing about that one of the largest stakes ever run for in any country took place; and it was in the same decade that two of the most important matches that ever took place in America were run off. In 1839, the great sweepstake of $2,000 each, four mile heats, at Louisville, Ky., was run off. The race was won by Wagner, beating Gray Eagle, Queen Mary, and Hawk Eye. At the same meeting, Wagner and Gray Eagle met again and ran their famous race for the Jockey Club purse. It was a race which at the time created a great deal of excitement. One of the heats was said by many to have been run in 7:38. The judges gave the time 7:43. The last three miles of the second heat was run in 5:35, which was a good performance. Gray Eagle broke down in the race, and Wagner never was of any account afterward as a race horse. Neither of these horses were first-class. Wagner was a game horse, but deficient in speed; while Gray Eagle's *forte* was speed—his staying powers were not of the sticking-plaster kind. Neither one of these horses could have lived a moment with Betsy Malone or Beeswing in a race of four miles. And there were several others that we have not named prior to 1838 that could, in the opinion of the writer, have defeated either Wagner or Gray Eagle, to-wit: Kate Kearney, Polly Hopkins, Red Gauntlet, Bertrand Jr., Betsy Ransom, Mons. Tonson, and, indeed, others not now remembered. Contemporary with the last named were many fine race-horses, such as Trifle, Black Maria, Sally Hope, Flirtilla, Sussex, Andrew, Post Boy, John Bascombe, Mingo and Medoc, who became more famous in the stud than he was on the turf. Indeed, I regard him as one of the most successful stallions America ever produced for the short time he was in the stud—his produce won more races in the same space of time than the get of by other sire before or since. He divided the honors with imp. Leviathan, one of the most successful stallions ever imported into America, not even excepting Glencoe. Many will dissent from this view. The get of Medoc all had a fine turn of speed, which is the first requisite of a racehorse, and many of them were good four-milers. The same was the case with Leviathan. His get were all gifted with wonderful speed, and as to whether they could go the distance, let Beeswing, Exio, Linnet, Fannie Strong, Othello, Scipio, Emerald, Sarah Bladen, Zelina, Vashti, Pete Whetstone, Flight, Ben Franklin, Princess Ann, The Pony, The Pony's Sister, Cissy, Arline, Jeaneton, Queen of Trumps, Virginia, Ann Hayes, and a number of others answer. All of the above were winners of four mile heats, and some of them were of the very first class. Besides his get which were winners at mile heats, two or three mile heats could be counted by the hundreds; and, mind you, his case was not like that of Lexington, who, a few years ago, had hardly any opposition, and had all the good mares in Kentucky to pick from. Leviathan had many of the most fashionable stallions that ever were imported to contend with—to-wit, Phyld, Loughborough, Chateau-Margaux, Rowton, Priam, Margrave, Consol, Hedgeford, Barefoot, Tramby, Nonplus, Belshazzar, and many others—besides a large number of native sires. Of the imported horses all were, at one time or another, standing while Leviathan was in the stud; some were located in Virginia and Kentucky; others in Tennessee or North Alabama. Of the stallions mentioned, Consol, in the opinion of the writer, was the most successful; he was but a few years in the stud, and was mostly used by his owner, Mr. E. H. Boardman, of Huntsville, Ala., who was one of the most extensive importers of thoroughbreds America ever had. Besides Consol he imported a large number of broodmares, and also the two fine racehorses Denison and Shamrock. From his breeding establishment came that wonderful little nonpareil, Miss Foote, who for her inches was one of the bestracers that ever marked the earth, either in this country or England; indeed, racing history does not furnish a parallel to her. She was scarcely fourteen hands high, and small in proportion. She was a racehorse in miniature; was a winner at all distances from mile heats to four-mile heats. Most of her races, however, were over a distance of ground; she ran a second heat of four miles in 7:35, and the sixth heat of a mile-heat race, best three in five, in 1:46, which race she won after seven heats, besting Torchlight (one of Glencoe's fleetest daughters) and several others. She was very much smaller every way than Trifle, another little wonder, whose performances all old turfmen are acquainted with. I believe that Miss Foote could have given Trifle 10 lbs. and a beating in a race of four mile heats. She was the making of her owner, trainer and jockey—they all achieved means and notoriety through her. She was, however, an exception as a general rule to the get of her sire, as most of his produce were large. Consol was the sire of Clara Boardman, Consol, Jr., Joe Chalmers, and many other winners. Next to Consol I would place Margrave, Blue Dick, Earl of Margrave, Fannie G., and Brown Dick, and other winners, they entitling him to that distinction.

* * *

I have left Glencoe out of the list of imported stallions, not because he ought not to be in the front rank, but I desire to compare him with Leviathan, as it has been generally conceded by turfmen that they were the two best horses imported since 1820, and except Diomed, the two best ever imported. When Messrs. Jackson and Elliot sent an agent to England for the purpose of buying a stallion to breed the daughters of Leviathan to, and at the same time supply his place should anything occur to that King of the Harem, who was then growing old, the agent had a *carte blanche* to buy any stallion in England. It was the intention at first to buy Touchstone or Pienipotentiary. Neither of them was for sale at any price. By and with the advice of one of the best horsemen in England, the agent purchased Glencoe. All know the selection was a good one. Glencoe was a good performer on the turf, but hardly first-class, as he was easily defeated by Pienipotentiary, a wonderful race-horse, and by many thought to have been one of the best race-horses that England ever saw, not even excepting the great Eclipse. But with the exception of Pienipotentiary and Bay Middleton, Glencoe was about the best horse of his day.

* * *

A YOUNG LADY CARRIES HER HUSBAND A LOT OF SAWS IN A DISHOP PORK.—Minnie Lee, a beautiful and intelligent young Englishwoman of only nineteen years, was before Justice Dowling Saturday afternoon. Recently, James Thompson, a noted burglar, was committed for entering a merchant tailor's st ore in Hudson street. He was convicted in the General Sessions, and was remanded for sentence. From time to time she visited him as his wife, carrying pots of coffee and other luxuries. Yesterday, when she entered the Tombs, her pot of coffee contained, neatly coiled up, a hemp rope about thirty yards long. This discovery led to a further search of the prisoner's cell, and there were found a patent "jimmy," two knives and two saws, which Minnie had taken to him. Warden John Slacom made the necessary affidavit, and Minnie was committed in default of $1,000 bail. The search was then continued further, and the Warden found a hand "bit" and two packages of the finest steel saws to match, all neatly packed in a dish of pork and beans. Thompson was to have made his escape last night.—*New York Standard.*

* * *

THE Nashua (Iowa) *Post* winds up a marriage notice with the quotation, "Suffer little children to come unto me."

FARM AND GARDEN.

IS CORN AN EXHAUSTIVE CROP.

The Cincinnati *Gazette* says: "It is in accordance with the experience of all our best farmers that corn is the least exhaustive to the soil of all the cereal crops. Why is this? Is it not largely owing to the fact that the soil is *kept loose* during a large period of the growth of the crop, and, being thus kept loose, does it not absorb a large amount of fertilizing matter from the atmosphere? Does it not take in a great amount of ammonia and carbonic acid gas, substances which are necessary ingredients in the growth of vegetation? If this is so, does it not furnish us a hint in regard to growing small grains in rows, eight, twelve or sixteen inches apart, thus enabling the farmer, by means of horse hoes, to keep the soil stirred during the growth of the crop. We understand that in England the wheat crop is *horse-hoed* to a large extent, and we know that in that country the average yield of wheat per acre is annually on the increase."

We hope experiments will be made by some of our intelligent farmers, as that practical results may be published, bearing on this matter, in the Agricultural Department of the UNION AND AMERICAN. It is by making repeated experiments that nearly all real progress is made in the noble calling of agriculture.

AMERICAN WINES.

The steady progress of this country in the production and manufacture of native wines is worthy of special notice. So far as our records extend back the juice of the grape was man's first artificial beverage. Its inevitable changes by fermentation when kept, of course, developed its peculiar stimulant powers as also its unfortunate tendency to intoxicate and brutify when used in excess. A curious question arises, says the Philadelphia *Public Record*, as to the rude and primitive mode of preparing the grape juice, which proved so efficient in the cases of Noah and Lot. What a contrast is presented them, and the complex and delicate manipulations to which we owe the Tokays, Hocks, Champagnes, Burgundies and Clarets of to-day, and what care is necessary to evolve and preserve the nice specific quality of each distinct from every other.

In our vast domain there are so many species of grape, such diversities of soil, water, temperature and climatic conditions generally, that we may safely look forward to a time when the United States of America will be a wine-growing country of an almost unlimited variety, and a success and perfection of quality equal to anything yet reached in the old world.

Of necessity we have begun by imitation, and the attempt to reproduce Madeiras, sherries and the sparkling wines of France, Italy and Germany. We should succeed better if we were not in so much of a hurry, but the demand outruns the supply, and quality is sacrificed to quantity. Our American wines should have time to undergo more manipulation and ripening processes, and there is also a lack of sufficient care to keep the separate juices apart so that each may develope its peculiar flavor and fragrance. One great vine raiser says, for example, that he makes but two kinds of wine out of one hundred and forty varieties of grape. With a better and more careful selection, however, there have been a much greater variety of wines produced in California and elsewhere, and some of these wines bear a very favorable comparison with those of the Rhine and Mocelle. Our imitations of champagne, however, still leave much to be desired, while our sherries and Madeiras seem thus far failures.

Some of the best results in American wine-making have been obtained from the native Scuppernong grape, which is hardy enough to grow anywhere. In North Carolina and Georgia this vine is rich and fruitful, but its special qualities are still further enhanced by the soil and climate of Florida and Texas, where it attains its climax of wine-making virtues. A very capital wine from the Scuppernong grape has for some time been produced at Apalachicola, under the name of the Mexican Gulf Riparian Scuppernong.

It is not an easy task to classify a new wine, but there is little doubt that this Scuppernong variety should be placed among the soft wines of the order, which includes the Vin de Grave, Hermitage, Sauterne, Barsac and Chateau Yquerro, and there is every reason to hope that before many years we shall be able to furnish our cellars and tables, from the products of our native vineyards, with wines as pure, rich, varied and delicate as any of those which are now imported as expensive luxuries, and which are often in a more or less adulterated condition.

FOR THE HOUSEWIFE.

Poached Eggs.

Put the frying pan on the stove, put in a little piece of butter the size of an egg; when it is melted put in six eggs and a teacupful of sweet cream; while cooking salt and pepper to suit the taste.

Tarts.

Lemon-butter is excellent for tarts. It is made as follows: One pound of pulverized white sugar, whites of six eggs and yolks of two, three lemons, including grated rind and juice. Cook twenty minutes over a slow fire, stirring all the while.

To Clean Carpets.

Messrs. Jennie Lewis, in the *Western Rural*, recommends the following plan for sweeping carpets: Wet paper and pull it into bits, and cast them over the carpet; then sweep off this paper with the broom, and the carpet will be clean and bright.

Baked Pork and Beans.

Have nice white beans put in soak in cold water over night; take a piece of fat side pork, parboil fifteen minutes, then place it in the pot with the beans, which ought to have been cooking an hour; boil the pork and beans together until the beans are perfectly soft, then remove with a skimmer to the dripping pan, and make an island of the pork in the centre, having first cut the rind with a sharp knife a quarter of an inch deep, in delicate parallel lines; bake three hours in a moderate oven, and serve hot.

Chicken Salad.

Boil a chicken that weighs not more than a pound and a half. When very tender, take it up, cut it in very small strips; then take six or seven fine white heads of celery, scrape and wash it, cut the white part small in pieces about three quarters of an inch long, mix it with the meat of the fowl, and, just before the salad is sent in, pour a dressing made in the following manner, over it: Boil four eggs hard; rub their yolks to a smooth paste, with two tablespoonfuls of olive oil, (persons who do not like oil use butter, and boil the fat of the chicken,) two teaspoonfuls of made mustard, one teaspoonful of salt, and one teaspoonful of strong vinegar; place the delicate leaves of the celery around the edge of the dish. White heart lettuce may be used instead of the celery, or any other salad dressing used if preferred.

Leber Wurst.

This is the name of a preparation of liver and fresh meats, invented by our Dutch settlers, and is not surpassed as a good reliable dish. Take the liver of a hog, the chops, or if not fat the whole head may be used; also the tongue and other pieces of lean and fat, enough in all to make three parts of meat and one of liver. This makes it rich. Some prefer a little less fat meat in proportion. Put in a kettle with water and boil till well done. Do not cut up when you put in the kettle, but leave the pieces whole; this will retain their flavor. When done, remove and let stand—the contents of the kettle being transferred to an open dish to cool. When sufficiently cool to bear the hands, roll up the sleeves and go to work, reducing the whole by working to the proper consistence; this is not to bring it to too fine a condition, as some have it, a soup almost, but it wants to be left somewhat coarse, that is, the pieces of fat and lean, and the tongue. The liver wants to be fined thoroughly; the object is to get the flavor of the liver with as little presence of it as possible. Reduce with a knife the pieces that are least soft, leaving an inch square in size, more or less. The object of this is to have the meat as meat, and have it flavored by the liver and tongue. When reduced, season with salt and pepper. Do not over salt or pepper, as these may be added when the mess is served, which it is by frying.

SUPREME COURT DECISIONS.

December Term — Nashville, 1870.

Joseph B. Heiskell, Attorney-General and Reporter.

No. 11.

Wm. B. Young vs. C. M. Donelson, et al.

RETURN ON EXECUTION—*Insufficient. Motion for Satisfaction.*—No judgment by motion will be rendered for a false or insufficient return of an execution upon which the plaintiff has entered satisfaction, in the absence of any proceeding or evidence to attack the entry.

JUDGMENT BY MOTION—*Satisfied Execution.*—Where, at the time of the motion, nothing is due on the execution, there is no sum for which to render judgment, or on which to compute damages.

Case cited, Chaffin vs. Crutcher, 2 Sneed, 395, explained and approved.

WAIVER—Waiver of right to judgment for official default. Trigg vs. McDonald, 2 Hum. 389. Cited, Wright vs. Johnson, 3 Sneed, 407.

MOTION IN THIS COURT.

M. M. Brien, for the plaintiff.
Ed. Baxter, for the defendant.

OPINION OF THE COURT.

This is a proceeding by motion in this court against the Sheriff of Davidson county and his sureties upon his official bond for an insufficient return. On the 10th of June, 1868, a writ of venditioni exponas, issued from this court, directing the sale of a tract of land which had been levied on by virtue of an execution upon a judgment rendered in this court on the 16th of February, 1869, for $862-50 and costs in the case of William B. Young vs. A. Creal. The process came to the hands of defendant's deputies, who made return thereof as follows: "Came to hand June 15, 1868, and executed by levying the same upon the within described property, and selling the same on the 12th of September, 1868, at the court house door in the city of Nashville, for sixty dollars and sixty-five cents to Mary J. Creal.

[Signed] M. C. AUSTIN, D. Sheriff.

On the 2nd of October, 1868, the plaintiff undertook to redeem the land in pursuance of the provisions of the Code, § 2,128, by bidding the amount of his debt, paying the costs and refunding to the purchaser the amount bid by her, and the following memorandum was written by him upon the back of the writ:

NASHVILLE, Oct. 2, 1870.—In this day raise the bid on the land sold to the full amount of my debt, or balance of same, and cost—that is, I bid for the land nine hundred and forty-four dollars, the principal and interest of my debt to the 12th of September, 1868, and cost of suit. I have paid the cost, and directed the Clerk to refund to Mrs. Creal the amount of her bid. WM. B. YOUNG.

The question of law arises upon the effect of this proceeding on the part of the plaintiff. It was an attempt to redeem the land which, under the statute, any bona fide creditor had a right to make. Though irregular and inartificial, we do not pronounce upon its validity, and such a question cannot be considered in this form of proceeding. The Code authorizes a judgment by motion for a false or insufficient return of an execution for the amount due upon such execution, and twelve and one half per cent damages—sec. 3,594.

The insufficiency of the return is not disputed in this case, but it is urged that there is nothing due the plaintiff, he having satisfied the writ by the full amount of his debt. The remedies against sheriffs and other officers for official malfeasance or malfeasance should be rigidly enforced—but this peculiar remedy—summary, harsh and in derogation of the common law, being very susceptible of abuse, and which may be converted into a most facile instrument of injustice—must be confined within the limits marked out by the law. The liability of the officer, said Judge Totten, must not be arbitrary, must depend upon the truth and justice of the case. He must be held liable only for the amount due upon the execution. Smith vs. Vanbibber, 1 Swan, 110. If he is in default by non-return or false return, or insufficient return, he becomes liable for the debt, interest and the twelve and one per cent. damages. But the plaintiff may lose his remedy by giving his sanction and ratification to the misfeasance of the officer, and by taking benefit and advantage under it. We can look only to the execution to ascertain what is due the plaintiff, and the inquiry is what is due him at the moment he invokes the judgment of the court. In looking to the execution we find that the debt is satisfied and discharged—there is nothing due—the plaintiff has undertaken to secure his debt by a redemption of the land. The execution does not inform us whether or not he was successful, and in this proceeding we cannot inquire. The time allowed for redemption has expired. He may be in the possession of the land for aught we know, at this moment, claiming and holding under this proceeding in full discharge of his execution. Or, if evicted by paramount title, he has not shown it, and we have nothing before us but a satisfaction of the writ under his own sign manual. Upon a proper proceeding, perhaps, the satisfaction might be set aside, and the motion for the debt, interest and damages, might be sustained. But such a case is not presented. It is clear that the plaintiff must fail upon his motion for the debt and interest—and it remains to be considered whether his right to twelve and a half per cent damages attaches upon the proof of the insufficient return. If the plaintiff, by his sanction and ratification of the return, has waived his right to this motion for his debt and interest, upon what principle can he demand the damages fixed by statute for insufficient return? The damages are in the nature of a penalty for an official default and are to be measured by the amount due at the time of the judgment. The motion lies, in the language of the statute, for the amount due upon such execution and twelve and one half per cent damages. There must be some amount due on the execution upon which the damages are to be estimated. It has been held by this court that the tender of the amount due on the execution, after notice, but before judgment, is no ground of defense against the motion. The failure to return according to law fixes the liability of the officer, which cannot be discharged by a tender. Chaffin vs. Crutcher, 2 Sneed, 360. This doctrine we do not controvert. The plaintiff had a right to his damages of twelve and one-half per cent. The officer's liability had attached. The plaintiff could not be compelled to relinquish his right by any acceptance of the tender. But if he had accepted the tender and satisfied the execution, there would have been nothing due upon which an estimate of the damages could be made—we apprehend that no court, in such a case, would have given judgment for damages. We would take it as an exceeding hardship, which can find no sanction in sound authority, and certainly none in the instincts of justice, if an officer, ignorant of the forms of law, had made a return which, however inartificial and insufficient in law, had nevertheless resulted in satisfying the plaintiff's debt, and yet for the harmless blunder, he should be subjected to the penalty prescribed by the statute, of paying to the plaintiff twelve and one-half per cent. for doing him the favor of collecting his debt. And that is precisely this case. Upon examination of the authorities, it will be seen that it is only in cases where the debt or a part of it is due at the time of the motion that the damages are given. Thus in the case of Barnes vs. White, 2 Swan, 442, it is held that the fact that the plaintiff in a judgment, has an alias execution to issue, and receives a partial payment after the Sheriff has rendered himself liable by an insufficient return of the first execution issued, is no waiver of the right to have judgment by motion against the Sheriff for the remainder of the judgment and the damages given by statute.

The plaintiff in this case having adopted the return—having by his solemn admission here of record, acknowledged the payment of his debt—cannot now be heard after the lapse of more than two years, to complain. He has waived his right to do so by his deliberate sanction of the act of the Sheriff, and by taking a benefit under it. This doctrine of waiver was carried much farther in the case of Trigg vs. McDonald, 2 Hum., 389, which was a case of false return. In that case the Sheriff made part of the money, and paid it to the plaintiff's attorney. It is laid down, said Judge Green, in the book heretofore quoted—Watson on Sher., 204—that if a Sheriff return that he has levied part only of the sum directed to be levied on the fi fa the plaintiff by receiving the money which the Sheriff returns that he has levied, waives his action against the Sheriff for a false return. Er. vid. Wright vs. Johnson, 3 Sneed, 407.

If then there be no debt how can the plaintiff take his judgment for damages. The damages are the incident of the debt—they spring out of it and are computed upon it. The plaintiff has seen proper to satisfy the writ and thus waive his right to a motion for the debt, and as the law entitles him to what is due at the time of the rendition of the judgment and twelve and one half per cent. damages thereon, it follows, as a logical consequence, that if there be no debt there can be no damages.

This cannot be assimilated to a case where only a partial payment has been made or even to a case where the whole has been paid into the hands of the Clerk. In the first case the plaintiff would unquestionably be entitled to the motion for the balance and his damages thereon, and in the latter he would have his election to waive his rights and accept the money, or to decline it and proceed against the officer for the whole debt and damages thereon. But in a case like this, where the plaintiff has adopted and ratified the insufficient return, and has, according to the record, taken benefit under it to the extent of the full satisfaction of his judgment and interest, and thus in a manner assured the impunity of the officer, and for more than two years led him to believe that the debt was satisfied, he must be held to have waived his rights and can take nothing by his motion. For these reasons the motion is disallowed.

SNEED, Judge.

LINES.

Respectfully inscribed to Miss Jennie C. E*****, of Pearisburg, Va.

Within her rural village home,
At base of "Classic Angel's Rest,"
Which peers toward the Empyrean dome,
Till clouds seem mingling with its crest,

There lives a gentle maiden fair,
Whose dimpled cheeks, and eyes so bright,
'Neath heavy waves of jet-black hair,
Shed forth a fascinating light.

Fit synonym of Cupid's dart
From one so pure, with faultless grace,
Hath made an impress on my heart,
Which Time's rough hand can ne'er efface.

For since I bade adieu to home,
To battle on life's rugged sea,
Recurring scenes of days agone
Are filled with happy thoughts of thee.

The still, soft voice of "memory he is"
Chimes o'er again some favorite lay:
And sadly to my heart it tells
Of some sweet one—a tune—and parting day.

A tune—it was the last I heard
From thy small tapering fingers trill;
Like sweetest note from "mocking-bird"
Though wand'ring far, I hear it still.

We're often forced to act a part
Adverse to what we then may feel:
And fond emotions of the heart,
With jealous watchfulness conceal.

For ten long years of toil, I said,
When starting, I'd a rover be;
And will you scorn to read, fair maid,
The lines I here inscribe to thee?

NASHVILLE, Dec. 1870. G. T. JAY.

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