

# The Abbeville Banner.

"LIBERTY AND MY NATIVE SOIL."

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CHARLES H. ALLEN,  
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At Chambers—Abbeville C. H.  
12th June, 1847.

The State, }  
v. } Upon application for a  
Giles, a slave of } Prohibition, or for a  
Wm. Pratt. } New Trial.

This is a second trial, of which the proceedings are now before me: and I regret to perceive, that in a matter so important, as every matter affecting the life of a human creature must be, notwithstanding the plain directions given in the Magistrate's Act of 1839, there are yet many and great errors in the proceedings. Magistrates who preside at the trial of cases like this, should remember that the law requires the various warrants and returns thereof, the steps by which the Court is organized, the offence distinctly stated, the evidence, the judgment and the sentence, all to be in writing. It is not sufficient that an essential matter did actually exist: it must appear on the face of the proceedings, and be there shewn to have existed. What is written must be taken to have been all that appeared; for here especially the rule applies, that part cannot be in writing and part be left to the memory of witnesses.

In these proceedings the following particulars do not appear, which should have appeared, viz:—

1. That the owner of the slave had one day's notice of the time and place of the trial. No recital of this is in the minutes of the Court; and if we look to a separate paper, the return of the Constable does not appear to have been sworn to.
2. That the freeholders were neighboring freeholders of the District in which the offence was committed.
3. That the freeholders were summoned.
4. That by the selection of the owner, or other means authorized by the Act of 1839, the freeholders who sat on the trial were regularly taken out of eight that were summoned.
5. That the free white witnesses examined in the case were sworn.
6. That after the evidence on the part of the prosecution had been heard, the prisoner, his owner, or any person in his behalf, was called on for testimony in answer to the charge.

\*7. That the sentence is to be executed in the year 1847, or any other particular year.

8. That the place of execution is certainly fixed, without an alternative left to the choice of the executioner.

9. That the execution is to be done by any particular constable, or by any constable at all.

10. That there was a distinct statement in writing of the offence, for which the prisoner was put on trial, to which the testimony was annexed.

I have enumerated these errors and omissions, that care may be taken to avoid them and all similar ones in future. I do not mean to decide how far

is not required in a case like this, but a distinct, that is, an exact and accurate, statement of the offence is required, as well by the principles of justice, as by the positive words of the law. Time, to a reasonable certainty, should be stated—place also: and that the place is within the District where the trial is had; and the essential ingredients of the offence must be set out, either by some word which contains them, or by separate enumeration.

Now what has this slave been tried for? For burning? It is not every burning, or the burning of every thing that is unlawful, much less punishable by death.

1. Was he charged of burning a stable, as arson at common law? Then it should have been stated and proved that the stable was an out house, appurtenant to a dwelling, and that it was burnt wilfully and maliciously. After conviction, sentence of death could not have followed; for a slave (except for particular offences enumerated in the Act of 1740, Sec. 16, 7 vol., p. 402 Statutes) can be punished capitally, only for some offence which is felony without benefit of clergy, (Sec. 15 of Act 1740,) and arson at common law, although felony, is entitled to the benefit of clergy.

2. Was he charged under the 16 Sec. of the Act of 1740, of burning fodder, or some other article, which was amongst the "goods or commodities of the growth, produce or manufacture" of this State? Then it should have been stated and proved, that the article burnt was of the growth, produce or manufacture of this State, such as is contemplated by the section above mentioned, and that it had been "wilfully and maliciously set fire to, burnt or destroyed." After conviction, sentence of death might have followed; but in the discretion of the Court, according to circumstances, a milder punishment might have been imposed.

3. Was he charged of burning a barn having grain in it? an offence from which the benefit of clergy has been taken away by Statute 23, Henry 8, c. 1, (2 Stat., 459,) and Statute 4 and 5, Philip and Mary, c. 4, (2 Stat., 484). Then it should have been stated and proved that the house burnt was a barn—that is, a house used for storing grain or provender—and that grain or corn (that is some breadstuff) was in it; and that it had been wilfully burnt. After conviction, sentence of death, or of milder punishment, according to circumstances, might have been awarded.

4. Was he charged under the Statute 22 and 23 Charles 2, c. 7, (2 Stat., 521,) of having in the night time maliciously unlawfully and wilfully burnt a stack of grain, or a building? Then it should have been stated and proved, that he did wilfully, unlawfully and maliciously in the night time burn a stack of grain, (not loose straw,) or some house or building contemplated by that Statute. After conviction, sentence of death could not have followed; for although the offence is made felony, punishable by death, the benefit of clergy is not taken away. See 1 Hawkins, Pl. C. 306.

Of any one, two or more of these four distinct offences, the prisoner might have been accused and tried. But of whatever he was tried, there should have been a distinct statement: and before conviction, proof to sustain the statement. If he had been charged of several forms of offence upon one trial, the judgment should have ascertained the particular form or forms of offence, of which he was guilty, and sentence have been awarded accordingly.

There was error and irregularity in admitting against the prisoner evidence of his bad character, and of previous misdeeds committed by him. If the defence of good character had been made, the prosecution might have been sustained by evidence of bad character. He is not presumed to be of bad character; but unless he attempts to clear himself by shewing its inconsistency with the general tenor of his conduct, evidence of bad character can at most only be taken as a circumstance, not that he is fit for crime, not that he committed this act; and like evidence of

previous misdeeds, may some times take by surprise an innocent person, who comes prepared to meet only the charge of which he is to be tried.

The remedy by new trial is much more convenient than by prohibition. It is therefore Ordered that the judgment be set aside, and that a new trial be had. Of this Order, let notice be given by the Sheriff to the prosecutor, John Clinkscapes, and to the Magistrate, John E. Ellis, Esquire, that proper proceedings anew may be had: and let the Sheriff detain the prisoner under this order, as under warrant of arrest and commitment for house burning, until he be delivered by due course of law.

D. L. WARDLAW.

## Washington's Generals.

The closing career of these Generals was various, and as it may have been forgotten by many, we will give a summary, as we find it in Headley's recently published work, "Washington and his Generals."

In 1779, when in service, Gen. Putnam was prostrated by a stroke of paralysis, but he lived seven years after the declaration of peace, and died at Brooklyn, Conn., May 27th, 1790, at the good old age of 72.

Gen. Montgomery, born in Ireland in 1736, came to this country as a Lieutenant in the British Army, and was stationed on our Northern frontier; but he sold his commission in England and in 1772, returned to this country, purchased a farm in Dutchess county, N. Y., and soon after married a daughter of Robert R. Livingston. His military education probably induced Congress to make him a brigadier General—when, after a variety of events, as is well known, he fell in storming Quebec, in an expedition, if somewhat Quixotic, certainly distinguished for the gallantry and heroism that all concerned in it, from first to last, displayed.

Arnold, whose treason has so associated his name with infamy, has more justice done his good qualities in Mr. Headley's book, than in any other sketch we have ever seen of his life; The cause of his treason, next to his own want of principle, is imputed, and with apparent justice, to the neglect and had treatment of him by Congress, which was often such that even Gen. Washington could not refrain from remonstrating against it. Gen. Schuyler was also treated, if possible, more unkindly, but Schuyler was a patriot, and such treatment had no effect upon his patriotism, whereas the passion for revenge made the unprincipled Arnold a traitor. The march of Arnold through the wilderness of Maine, with his subsequent onset upon Quebec, is set down as one of the boldest achievements on military record; and but for the treachery of an Indian, to whom he had entrusted letters, there is but little doubt he would have succeeded in surprising that important fortress, and thus have secured the Canadas to the U. States. At the capture of Burgoyne, Mr. Headley represents Arnold as the principle actor, and Gates, the nominal commander-in-chief, but little more than a looker-on. After the close of the war, Arnold went to England, but detested there for his treachery, removed to St. John's Brunswick, and established himself as a merchant. He rapidly acquired a fortune; but even there he became so odious, that the people burnt him in effigy, which they named the traitor. When the war broke out between England and France, he solicited an appointment in the army, but the officers steadily refusing to associate with him, his request was denied. He died in London in 1801—sixty-one years of age.

Gen. Stark was born in New Hampshire, of Scotch descent. He served in the old French war as commander of a company of Rangers, and was with Lord Howe before Ticonderoga. This sort of military education, united with his enthusiastic patriotism, probably induced Congress to make a General of him. At the battle of Bennington he immortalised his name, and it was there he rallied his men with the exclamation—"See those men! There are the red coats. Before night they are ours, or Molly Starke's a widow!"

Gen. Schuyler was born at Albany, in 1733. He was also with Lord Howe in his ill-fated expedition against Ticonderoga. The preparations for the subjugation of Burgoyne's army were under his direction, but he was not present at the battle.

Notwithstanding the fact that he had reaped the fruits of his military career, and was therefore entitled to a high rank, he was not promoted to a higher position than that of Major-General. He was superseded by Gen. Green. He was an Englishman by birth, and served as an officer in the English army; and having,

after the old French war, settled Berkley co., Va., his military education pointed him out as a proper man to command in our armies. At the battles on Bemis' heights, according to Mr. Headley, he kept himself in camp, and took no active part in the bloody contests; but such was the *clat* attending the surrender of Burgoyne, that he was selected to relieve the falling fortunes of our countrymen in the South, where, however, in the battle of Camden, he was defeated and disgraced. After the war, he settled on his old estate in Virginia, but in 1790 he removed to New York, and was elected a member of the Legislature. He died in 1806, 77 years of age.

Baron Steuben was one of the most interesting characters among our military heroes. He was the great drill officer of the revolution, and first taught our raw soldiers discipline, and so prepared them for victories. He was aid-de-camp to the King of Prussia, and learned the art of war under the great Frederic; but he finally resigned his military position, and honored with various civil appointments, and enjoying a salary of about \$3000 per annum, he sacrificed all, it seems by the solicitation, and under some promises of the French Court, to come to the United States, in order to teach us the art of war. He first saw our army at Valley Forge, famished, half-naked, looking more like beggars than soldiers, and fresh as he was from the well-fed and well-disciplined corps of Europe, the contrast must have been painful enough. He, however, undiscouraged, began his drills, and in the very next campaign, his soldiers began to retrieve the losses they had suffered as raw troops heretofore. From that time on, our regulars were never beaten in a fair fight, and subsequently, at Eutaw Springs, some of his men, to the utter amazement of the English troops, beat them with their favorite weapon, the bayonet. At the close of the war, he tried in vain to obtain from Congress a fulfillment of its contracts with him, and only after seven years trial, could he, through the instrumentality of Washington and Hamilton, finally obtain a pension of \$2,500 a year. The New York Assembly voted him a township of land near Utica, in that State, where he built a log-house, died, and was buried in 1797.

We have no room even to abbreviate what is said of Gen. Wayne, the hero of Stony Point, who died at the age of 51, soon after his successful expedition against the Indians on the then Western frontier. For his life, and for the lives of the others, we must refer our readers to Mr. Headley's book.

## COMETS.

Comets are light vapory bodies, which move round the sun in orbits much less circular than those of the planets. The orbits, in other words, are very long ellipses or ovals having the sun near one of the ends. Comets usually have two parts, a body or nucleus, and a tail; but some have a body only. The body appears as a thin, vapory, luminous mass, of globular form; it is so thin, that in some cases the stars have been seen through it. The tail is a lighter or thinner luminous vapor, surrounding the body, and streaming far out from it, in one direction. A vacant space has been observed between the body and the enveloping matter of the tail; and it is equally remarkable that the tail has in some instances appeared less bright along the middle, immediately behind the nucleus, as if it were a stream which that nucleus had in some measure parted into two. In ignorant ages, the appearance of a comet in the sky, never failed to occasion great alarm, both on account of its threatening appearance, and because it was considered as a sign that war, pestilence or famine, was about to afflict mankind. Knowledge has dispelled all such fancies; but yet we are not well acquainted with the nature of comets. Out of the great multitude—certainly not less than 1,000—which are supposed to exist, about 150 have been made the object of scientific observation. Instead of revolving, like the planets, nearly on the plane of the sun's equator, it is found that they approach his body from all parts of the surrounding space. At first, they are seen slowly advancing, with a comparatively faint appearance.—As they approach the sun, the motion becomes quicker, and at length they pass round him with great rapidity, and at a comparatively small distance from him.

of revolution have been calculated. The most remarkable of these is one usually denominated Halley's Comet, from the astronomer who first calculated its period. It revolves round the sun in about seventy five years, its last appearance being at the close of 1835. Another, called Enke's Comet, from Professor Enke of Berlin, has been found to revolve once in 1207 days, or 3 1/2 years; but in this case, the revolving body is found, at each successive approach to the sun, to be a little earlier than on the previous occasion, showing that its orbit is gradually lessening, so that it may be expected ultimately to fall into the sun. This fact has suggested that some part of that space through which the comet passes must be occupied by a matter presenting some resistance to the movement of any denser body; and it is supposed that this matter may prove to be the same which had been described as constituting the zodiacal light. It is called a *resisting medium*; and future observations upon it are expected to be attended with results of a most important nature, seeing that, if there be such a matter extending beyond the orbit of the earth, that planet, in whose welfare we are so much interested, will be exposed to the same ultimate fate with Enke's Comet. The third, named Beila's Comet, from M. Beila of Josephstadt; revolves round the sun in 6-3-4 years. It is very small, and has no tail.—In 1832; this comet passed through the earth's path about a month before the arrival of our planet at the same point: If the earth had been a month earlier at that point, or the comet a month later in crossing it, the two bodies would have been brought together, and the earth, in all probability, would have instantly become unfit for the existence of the human family. Comets are often affected in their motions by the attractions of the planets. Jupiter, in particular, has been described by an astronomer as a perpetual stumbling block in their way. In 1770, a comet got entangled amidst the satellites of that planet, and was thereby thrown out of its usual course, while the motions of the satellites were not in the least affected. Comets often pass unobserved, in consequence of the part of the heavens in which they move being then under daylight. During a total eclipse of the sun, which happened sixty years before Christ, a large comet not formerly seen, became visible, near the body of the obscured luminary. On many occasions, their smallness and distance render them visible only by the aid of the telescope. On other occasions they are of vast size. The comet now called Halley's, at its appearance in 1456, covered a sixth part of the visible extent of the heavens, and was likened to a Turkish scimitar. That of 1780, which was observed by Sir Isaac Newton, had a tail calculated to be 123,000,000 of miles in length, a space greater than the distance of the earth from the sun. There was a comet in 1744, which had six tails, spread out like a fan across a large space of the heavens. The tails of comets usually stretch in the direction opposite to the sun, both in advancing and retiring, and with a slight wave in the outer extremity, as if that part experienced some resistance.—*Saturday Gazette.*

VIOLATING THE PAROLE.—Gen. Canalizo, a famous Mexican General, in addressing "the enemy," takes occasion to say that his force will be strengthened by the brave defenders, "who so heroically defended Vera Cruz." These expected reinforcements were the troops dismissed on a parole by Gen. Scott after the surrender of that city. It will be remembered that after the battle of "the 6th", Gen. La Vega refused to take his parole, because, he said, his government, "would not respect it." The Mexicans are not more honourable now than they were then, and to presume that they will respect a parole is ridiculous. They fighting them, taking six thousand prisoners, and letting them off, to fight us again, seems to give a prospect of interminable warfare. If breaking a parole is punishable, the laws should be executed with singular severity against the Mexicans. We have got into this war, and unless the government is prepared to carry it on with all the rigors necessary to end it, our troops had better be withdrawn. At Cerro Gordo many soldiers were recognized who had been captured at Vera Cruz; among the dead were discovered officers known to have been released on their parole. How can we expect to win a war, if we do not execute the laws of war?

"If over I reach Heaven," said Dr. Watts, "I expect to find three wonders: 1st, The presence of some that I had not thought to be there. 2d, The absence of some whom I expected to meet there. 3d, The greatest wonder of all, will be to find myself there."