

Superior Court--Seventh Judicial District, N. C.

ALBION W. TOURGEE, Judge.

To his Excellency

Jas. B. Caldwell

Governor &c.

Sir:

I this morning received the accompanying letter from Mr. R. Strayhorn Esq. of the Orange Cour.

I am unable to comply with the request contained in the letter. Such your Excellency might be amply influenced by any refusal of this request, it may be proper for me to state the reason of the same.

After mature deliberation, I have made it an inflexible rule, upon which I have acted for several months, to make no recommendations, pro or con, in cases of applications for Executive clemency. For this reason I must respectfully decline to make any recommendation in this case or any other -

As to "the trial its conduct &c", if I had been aware of any irregularity I should not have passed sentence - I doubted as to the crime being, under our statutes, embraced under the technical term Rape, in the Constitution - I do not think a perfectly strict construction would include "carnally knowing and abus-

an infant ~~female~~ child under the age of ten years."

This may be a ~~wrong~~ question of name but it is a question nevertheless. This very doubt caused the adoption of 18th Eliz. c. 7, § 4, "for the better declaration of the law" under the most generally adopted definition of ^{Rape} ~~this crime~~ - "forcibly and against the will," this crime certainly is not embraced nor is the Bill drawn in the manner prescribed for that offence. If the broader definition - "without her consent" be adopted then it is embraced under Rape. Our own statute in my opinion separates the offences, and I also think our Supreme Court decisions combine, or more correctly, confound them. Judging from them, I decided the weight of authority in our State to be that it was Rape and might therefore be made a capital offence under the Constitution - As a new question I should have been very clearly of a different opinion. I yielded to what I considered authority and gave sentence for a rape. I supposed there would be an appeal and suggested one to the counsel. I think it is a question which ought to be explicitly decided by the court of final resort - I have the honor to be

Yours Excellency's obt. Servt

A. W. Torrey
Judge Fish