## LEGAL. IN SOMREME COURT, STATE FRANCIS E. RIVES, S December Term, 1944.

The Defendant was indicted in Northampton Coun ty, for tearing up a part of the Portsmonth and Roanske Rail-Road, contrary to the 7th Section of the Act of Assembly, creating the Portsmonth and Roaneks Rail Road Company.

The justified upon the ground that he had bought so much of the Road as lay is Northampton County, at a sale made by the Sheriff of Northampton, under an Execution, issning on a judgment obtained against the Company by one ROCHELLE, on a debt due by them to him.

The Court below having decided against the Defendant, he appealed to the Supreme Court.

The case was argued at great length at June Term. 1844, by the Attorney General, B. F. Moore and Iredell, for the State, and Badger and Bragg, for the Defendant. The Court took time to consider, and at the last Term, through Chief Justice Rurr s, delivered the following Opinion :

#### **OPINION**

This case was treated at the bar as depending upon the question whether the defendant gained a right of property by the Sheriff's sale and conveyance in the part of the road purchased, or in the materials of which it was constructed. We think that a proper view of the subject, because the statutes which make it an offence to obstruct the road or destroy its materials, have in view the acts of a person who is not the proprietor of the road or material, but acts wantonly and not in the exercise of a right. The seventh section of the charter, for example, provides that if any person shall wilfully injure the road, he shall forfeit the sum of \$500 to the company, to be recovered by the company in an action of debt, and shall also be subject to an indictment. So it is seen that the indictment is given where the penalty is incurred to the corporation, and that cannot accrue when one enters under the corporate conveyance, or under a sale on execution against the corporation, provided such sale passes the property and the purchaser peaceably enters upon his right of property.

The enquiry, then, is, whether by the law of this State the writ of fieri facias lies against the land on which a rail road is laid out ! It might be material to distinguish between the road itself. and the materials, such as the iron and timber. laid down on it, if the corporation had a mere casement or right of way over the land; for in that case the law would probably, in favor of cred. itors, regard those materials as mere fixtures of an occupier of land, which might he severed and sold by the sheriff, if, as the property of a privileged corporation, they were not altogether exempted from execution. But the Court does not deem it needful to enter into that question here. for two reasons-the first, that the materials were not severed, nor were they sold as distinct from the land; and the second, that we think the corporation had an estate in the land, at least for a term extending far beyond the duration of those materials, and therefore that they had lost their distinct character as personal chattels, and were sunk into the realty. We have said that the corporation had an cetate in the land laid off for the road. Both the express provisions of the charter, and the necessity of the case, lead to that conclusion. The 3d section, enacts that, after the assessment and payment of the damages, the company may enter upon the land condemned and hold it to their use and benefit, for the purpose of preserving and heeping up the road during the continuance of the corporate existence by the act given to them, (which is risty years.) and declares that, in all things, the company shall have the same power and authority over said land so hid off during their existence ss a corporation under the laws of this State, as though they owned the fee simple thereis. This language can signify no bing loss than that the corporation is the tenant of the land, as the owner of the legal estate for the term of sixty years, subject to the earlier determination of the corporation from any cause. Most of the rail road charters in this State give an estate in the land in fee. Some estate, indeed, is necessary to the preservation or protection of the road. It is true the act gives a penalty of \$500 for destroying any part of the road But that is an inadequate protection-for an evil disposed person might burn a valuable bridge, or do some other injury for beyoud that penalty in value, or might intrude on the land without actually obstructing the road, and in such cases the company ought to have, and no doubt has, remedy by action of trespass or ejectment, as the tenants or owners of the soil. It is true, the act says the company shall hold the land " for the purpose of preserving and keeping up the road,"-and it is contended that these words, at least, make the estate conditional, and that the condition is of such a nature as to defeat the estate, if not performed, and thence it was inferred that there could be no sale of it, inasmuch as that would prevent the company from performing the condition.' As far as respects the rights of the company, or the private interest of its stockholders, these considerations, if true, could avail nothing-for the debtor has no interest in the question, to whom the property shall go af er a sale of it for the payment of his debts. That is a question which, in this case, may arise between the reversioner and the purchaser, or between him and the public. An estate, upon condition, is not necessarily exempted from sale by execution. But we do not regard those words as creating a condition, in its proper sense. They only assign the reason why the law vests the estate in the corporation. The object in view was to have the road, and that is stated as the justification of taking private property and vesting it in the corporation. After being thus taken at the full value pail to the former owner and vested in the corporation, we see no reason why it should not be considered as absolutely vested in the corporation during its existence, or in its assigns during the whole period for which it was taken. In the case of common and free highways, the publie have only an easement, and therefore the remedy for obstructing the passage over it is by indictment-merely. But the estate, the right of rol, remains in the original proprietor, who has an action for injury to the land as the owner of the soil, as he might have in respect to any other part of his lind. But in the case of a rail road, it would be manif-stly incongruous not to give to the corporation the action for dee roying emwhich the company erected with its funds, but It was admitted by the Counsel for the State, that this proposition must be received as true, in reto give such action to the original owner of the speet to all the other property of the company. land. From the nature of things, therefore, the necessary construction of a charter for such a corporation must be to yest an estate in the land in the company, unless it be clear that the contrarr wie intended. Having ascertained that the corporation has an estate in the land and not a more easement, it more to follow, that such estate is liable to exeention. In reference to corporations generalis, it certaibly is true, that in our law their estates. real or personal are sulject to sale on feri facias in the same manner as those of natural persons. Be the act of 1820, the plaintiff, in a judgment against a corporation, is entitled to either a disliterna or a fori facias, and they may be lexied on the money, goods, chattels, hands and tene. ments of the enroration. Rev. St. c. 26, s. 5-"Choroloro, it is clear, that this land is liable to

arose from the nature of the property vested in

the company and its purposes, and from the ino penalties and pains for not keeping up the road, esented considerations of so much more weight an individual does, that the law ought not to take from it the land to which that franchise is annexed. We agree that the franchise itself cannot be sold.

emplyment. We admit also, that the right of the land of another for tell, is but an casement united with a franchise, and is not distinguishable in this respect from other franchises. Yet, it will not follow, that if the grantee of a franchise, thing, that such thing may not be taken in execuvery unfortunate, and cause much loss in a pecuniary sense to arrest the exercise of a franchise by depriving its proprietor of an estate or thing needful to its exercise, when, of the two, the franchise or the tringible thing, the former is much the more valuable. We regret, sincerely, that it has hitherto escaped the attention of these companies, and of the legislature, that some act was necessary in order that such sales, when unavoidable, might be made with the least loss to the debtors, and the greatest advantage to the creditors and purchasers, by providing for the keeping of the franchise with the estate. Or, if it so please the legislature, an act might provide for putting the road into the hands of a receiver, and subject. ing the income to the creditors, instead of the estate in the land, stripped of the franchise .---But nothing of either kind has been done, and those are considerations for the legislature, as to their future action ; and cannot influence the decision of the Court as to rights of the creditors of these corperations under a different state of the law: The question for us is, between the necessity, on the one hand, of subjecting the tangible property of this corporation to sale for i's debte. although at the expense of the suspension or loss of its franchise, or, on the other hand, of saying that the creditor has no remedy whatever, and that the corporation may keep its property and enjoy its profits in definnce of moral right and the process of the law. Between these alternatives. a court of Justice cannot hesitate. If the corporation has means to pay its debts and will not. or, if it has contracted debts which to pay without a sale of its property, we can only say, that it is the duty of the Court to enforce payment by a sale of the corporate property, he the consequences to the pecuniary interests of the corporation what they may. The law is not responsible for those consequences ; but they have been brought on the corporation by the want of integrity or prudence in its management. It is a sacred principle of justice and law, applicable alike to all persons, natural and corporate, that the obligations of contracts should be enforced. and debtors prevented from retaining their property to the disappointment of the creditore .-And it is likewise a principle of equity and policy that all debtors should be placed on the same footing ; and, consequently, that what one is compelled to yield up to his creditor, another shall not be allowed to keep to his own use. Against the operation of those cound and salutary maxims of morals and law, it requires much more to be opposed than an argument of incouvenience, that the debtor loses much more than the creditor gets. Still, it is to be replied, that the cred tor is entitled to his debt at all events, and that he ought to have it, even at that expense rather than not at all. Therefore, an execution against the property of a corporation, which the law express. ly gives against all corporations, must be satisfied out of its property, provided only that such property be within the description of goods, chattels. lands or tenements. When the law awards an execution of that kind, how can the Court say, without a direction from the legislature, that it shall not be served on chattels or certain lands of the corporation, because it would be a detriment to the corporation to be deprived of them. There is no mischief in the case comparable to that of leaving just debts unpaid :- debts necessarily contracted for the labor or property of the creditor employed in constructing the road. That would be the view properly to be taken of the law. if there were no special provision in the charter of this company, denoting an intention that its property should be liable to execution. But there is an express provision of that kind. By the charter the company has the faculties of suing, and being sued, and is to enjoy all the rights, privileges and immunities of a body politic; and by the fourth section, for the damages assessed for entering on land and taking stone, earth and timber for making debis-and for such purposes only can the co the road, the execution is expressly given sgains this, "as against other corporations." It is true. that the act specifies but one case, in which it gives execution. But there is no reason why a preuli ir preference should be given to that demand above all others, as to the mode of obtaining satis. faction. That case was particularly mentioned, because it was proper to give a summary assess. ment of the damages and speedy satisfaction of them, as a justification for the taking of private road should be preserved to the corporation as its priproperty. But when another debt is reduced to rate property? We think, elearly not. If such a judgment by the regular course of law, that ought thing had been asked for in the charter, it would be re also to be satisfied in like manner ; and hence, the particular case mentioned in the act is not to be looked on as one to which a peculiar remedy is annexed, but, rather, as an example of the mode in which payment of the debts of this corporation was to be obtained, that is, by making its property, including, of course, all its property, liable to exern. tion for its debts, as the property of corporations generally is liable on execution for their debts. In other words, it was not intended to discrimina's | can no otherwise obtain satisfaction but by a sale between rail road corporations and other corpora- the road, there can be no doubt, that the public ou tions as to their duty of paying debts, or the modes to give up and intended to give up the convenience of of coercing them to the performance of their duty.

shall not be the subjects of execution. But, it otherwise provided by Statute, the real estate, up was contended for the State, that such exemption disposed of, will revert to the donor, or erigit owner : yet, that is only true as to such estate remains in the corporation at the moment of terest of the public in the road It was urged in desolution, and does not apply to such as had reference to the interests of the corpor tou, that been diverted out of it either by its own act a the preservation of their franchise of receiving by the act of law. In this case, therefore, it toll, which depended on their remaining in posses- sale was not viin, but the purchaser got the esta eion of and keeping up the road, and their liability in the land which belongs to the company. Al that was not so by the common law, it would, the think, necessarily be so upon the construction of than any which the mere satisfaction of a debt to our Statute, which gives the writ of fie's fact an individual does, that the law ought not to take against the company; for, instead of arging that there should be no sale, because the p irchas it gets nothing, the argument is the other itav, if ; It is intangible and vested in an artificial being of the purchaser does get the estate, becausefth : sa'

particular organization, suited, in the view of of it is authorized; and, therefore, event ip me the legislature, to the most proper and beneficial subsequent dissolution of the corporation the led use of the franchise ; and, therefore, it cannot be would not revert unt I by laps of time the chart a assigned to a person, natural or artificial, to which | would have expired. But really, there many miss the legislature has not committed its exercise and ground for exempting the line of road than the other property of the company ; for its op rat of passing or of transporting persons or things over the beneficial use of the road either to the com pany or the public, is as effectually suspended ay the sale of all its other effects as by that of the road itself. Indeed it must be supposed, under our law, that its personal effects have actually whether a natural person or a body politic, has a been sold, or are purposely withheld and concentvested property in a tangible, personal or real | ed by the company ; because the Sheriff cantio: rightfully sell land while there are personial tion, although it be useful or indispensable to the chattels. If so, then the creditor is reduced in most beneficial or even any enjoyment of the fran- the last resort, namely : on the land for his deb" chise ; noless, indeed, it be declared by the legis- and for the reasons already given, it must go lature not to be liable to distress or sale. It may be rather than he should be detrauded of his debis The question has thus far been considered reference to the conflicting claims of the credit or and the corporation to the protection of the law. The counsel for the State, however, inteposes, as a further and distinct objection to il sale of the road, the right of the public to the u a of it es a highway, and the necessity that he cort pany should retain the road to enable it to pertur i its duty to the public by keeping it up as a hig . way. This position rests on the assumption that because the road is a highway it is ex to termini not liable to execution. Now, we cannot also to that proposi i n in the extent here lad down is correctness depends on the sense it while the term " highway" is used, and on the Legisla ive intention as to the liability of the property of rail road companies for their debts. The Consaid in the case of the Raleigh & Gaston R. vs. Davis, 2 Dev. & Bat. 451, that a rail fond a a highway ; but it does not follow, and certain r it was not intended, that it should be understal to be a common public highway, on which all c tizens were free to pass, and which, from necesity, could not be the subject of execution, because there is no estate in the public, and because the encoment is exclusively in the public. In that is pect there is an essenital difference between the one kind of roads and the other. Rail roads, s though publici juris in some respects, are th subjects of private property, and it is in the latter | acre. character that they are liable to be sold, unless forbidden, by the Legislature : not the Manching, is a detinct thing from the franchise. In the sense, that the land and other things takin for is construction are taken for a public use, ilasinui h as it is a mode of opening avenues of communcation between different parts of the State. and with other States, and, therefore, that it was a roper exercise of the right of eminent domain. we think the expression was correctly used ... We have no doubt, too, that it is so in some r . spects as to the modes of enforcing its (us re ? expressly made an indictable offence, as a show he by the case now under consideration. The State calls on the corporators, to the full amount of their subscriptions, and lay out the whole capital and the profits in constructing the road and keet. rany, 2 B & Ald. 645. So, while the chings y is in possession and using the road, it must be if. dictable for non-repair, upon the settled principal ment to the public in accepting their chatter and occupying the road But that it is a highway in the sense that it is not the subject of execution. is quite a different thing. That depends upon the Legislature-and the silence of the Legisla ture as to the liability of it to execution necesi arily leaves it thus liable. Roads of this kind have peculiar properties-having a double aspect; the public service and private profit. But bith mugt necessarily yield, in honesty and justich, to the consequences of the impracticability of construct ting and keeping up the mad by the means pr ided by the charter, and without costracting debts for those purposes The public does n obtain an absolute right to require the porport tore to construct the road, by the acceptance the charter and entering on the work. The e gagement of the company is only to lay out it capital assigned them and sufferibed and o that extent they may be compelled to proceed. If that be not adequate, it is simply a card of m alculation of estimates by both sides, and the public loses the use of the road on its side, and the corporation loses its purchase and califal, unificilities to the corporation. But suppose the rond to be completed or kept up by cogtractieg poration contract debis-or suppose the roli pany to incur a liability for damages than i dividual ; it is plain, we have eeen, that the cor poration ought to pay these debts or datiages Now, can it be imputed to the Legislature, that i intended in passing this charter, that such delta should not be paid, and that, in order to privent the payment of them, the public prerogative to a right of way should be asserted, and, under coversof it, the been thrown out of either house of the assent by, with disgust and scorn. If the Legislature wer) making the road on the public account alone, the public fail would be the guaranty that all demands for labor o materials laid out on it, should be fairly pail. Sor i was not the intention of the legislature. that this read should not be paid for, or that it should be built at he expense of any person but the corporators. The p blie would not have it on any such terms ; and if nin sous, who have laid out their money or layor the road, rather than do injustice to the citizen of ie ny also be paid : if one must yield, there can be no

may be executed by the State directly. Hut by con-stituting a corporation to execute this work and to have property in it ; by enacting that the fieri facias shall run against the property of corporations generally; by not exempting the property of the rail road company from the general liability of corporate property to execution; and by declaring in some cases that execution should run against if " as against other corporations ;" the legislative intention must clear-ly be understood to have been, that the public right to the use of the read should be dependent upon the ability of the corporation to meet the just demands of its creditors without a sale of the read. Paying the debts for making the road is the first, and highest duty of the corporation. The element of that duty is moral, and precedent to any more duty of police; and the Legislature & mot be supposed to have inten-ded a violation of that first of duties, upon any evidence less than its explicit enactments.

The court is, therefore, of opinion that this land was liable to be sold on the execution, and that the purchaser would have obtained a good title, had the sale been duly made. It was not, however duly made. By the statute, Rev. Stat. c. 45, sec. 10, it is enacted that all sales of land and s'aves shall be made at the court-house on Monday of the county court, or the corresponding Monday in every month. The sale in this case was on the premises and on a differ ent day of the week We have more than once said. that this is a substantial part of a sheriff's sale, because the regulation is for a sale of all the property at one place and at the same time, which may be affered for sale in the county in any one month, under the expectation, that there will be numerous bidders and fair prices had. Of such a regulation, every one must be cognizant ; and therefore we have held, that the purchaser gets no title by a sale at an improper time and place. Mordecai vs. Speight, 3 Dev. 428 Avery vs. Rose, 4 Dev 554. For this last reason the judgment must be afirmed. We regret that result, as we have just been informed, that there is a private act regulating sales in Northampton county and that the sheriff observed its provisions in this sale If so, it is unfortunate that the act was not stated in the case ; for being a private act, we cannot judicially notice it, and, indeed, we have not seen it. Judgment to be affirmed.

### THE SWEET POTATOE.

Our planting friends will find in the following rticle, which we extract from the "Vickeburg Constitutionalists," much valuable information relative to the above named common and useful egetable :

"We do not know a more valuable edible plant root or vegetable than the Sweet Potatoe ; its productiveness is really astonishing, wonderful. In soil well adapted to its growth, we have heard of 1500 bushels being housed from one acre ; we ly, and we have evidence of 1200 bushels being care ully mensured from one acre of a field of ten, to decide a bet, many years since. There is no difficulty in keeping them now, nearly all the year; there is no difficulty or extra labor in the

The best soil for Sweet Potatoes is rich. loose and new : stiff clay does not suit them. Deep tional name, abandon our present Constitution. but the estate of the corporation in the land, which ploughing is just as necessary as 'tis for every erect ourselves into a new State, adopt the appellaother agricultural production. Let the beds be tive of the "State of Texas." organize a new made just four feet from the centre of the fur- Government of a republican form, by means of rows between ; throw the earth up with a heavy deputies assembled in convention, and, after we slough as high as possible, and then the hoe labor have passed through this prescribed revolution ; will be light; make the ridges eighteen inches after we have thus voluntarily deprived ourselves high and do not make them before your plants of every feature and lineament of that nationality are nearly ready to set, otherwise they may be- under which our independence has been recognised come soddy or hardened. The plants are often by foreign Powers ; after we have, in fact, anniplaced immediately in the ridges ; this plan may hilated our identity as a community, and repudiado very well when you have seed in abundance ted eren our name, so that we can neither know aration and punishing its obstruction. The latter a to plant and replant; but we think it best to bed nor be known in the rank and seat among in the case " Attorney General, on relation of C. the plantings in rich mellow soil, elevated so as nations which we have hitherto occupied, at least to keep the water off, and narrow enough to draw | without dishonor, and with the consent of the old may compel the company by madamus to make seronts without trampling them. When they world and the new; after all the sacrifices and all put forth a leaf or two they are ready to place in this degradation, what shall we have gained ! compel the Justices to grant license to said rethe ridger, which must be done in rainy or moist | what shall we have accomplished ? Annexation | lator to retail in the town of Greensborough. weather, and the earlier after there is no dan- to the American Union ? No; not even the promise ing it in repair, if adequate and necessary to that ger of frost, the better. In this State the plan- of it. end. The case of the Severn & Wye Railway Cost. | tings may be bedded in the latter part of February, or any time in March and the ridges prepared as soon as the sprouts begin to appear hand somely. They must be kept clean to secure a that they are bound to repair by their engage. good crop ; carefully weeded, and the grass and weeds kept from the whole field. After the vines | will continue their amicable intercourse with our begin to run, then draw the soil well upon the Government as the Republic of Texas, under the ridges again, first ploughing carefully between. name of the " State of Texas," habited in the relation to this subject. We propose to copy it Sweet Potatoes sell readily in all cities, towns and villages. There is no better food for man or of American States, the very cut and fashion of we present our readers with the points embodied heast. The best of the various descriptions is which have been prescribed by their Congress called in Mississippi, Yam; in North Carolina Why; in such a guise we should not even know tis well known as the pumpkin Spanish. The medicinal quality is valuable and important .---When properly baked they are very sweet. Child. ren are very fond of them, and they are a sovereign remedy for the " summer complaint." Horses, cattle, sheep and hogs cat them greedily and fatten upon them. Negroes are always happy when they have a plenty of " Suces Taters"and negra children never want any thing else .--With the least attention properly given, 400 bushels to the acre can be produced ; value them at forty cents, (less than they ever have been sold for.) and you have \$160 for one acre, which in Cotton is not worth over \$20. Sweet Pota- order," as the resolution declares, " that we may toes cannot be raised North, and our steamboats can find markets up the Ohio, Mississippi, and Missouri for tens of thousands of bushels. 'That's less there be a new agreement, granting furth r the way to turn the "Black Tariff" upon the Yankees." 17 The case of Capt T. SANGSTER, for an agstult on ex-President Adams, was tried in Washington. on Wednesday. It will be recollected that this assault was made last winter in the Capitol, and while the House was in session. Mr. Adams, in lis testimony on the Irial, stated that at the time he thought Sangater must have been in. sate or intoxicated ; that a few days after the assault he received a letter which perfectly satisfi d him that Sangeter did not commit the assault with any malicious intention, and he freely forgave him, hoping that, so far as he was personally concerned, no punishment might be inflicted .-The Court, notwithstanding this, regarding the assault of an aggravated character, sentenced the prisoner to thirty days imprisonment, and a fine of \$100. A petition was immediately got up for a pardon, which Mr. Adams signed.

ANNEXATION" IN TEXAS. It appears to be by no means certain, judging from the complexion of the Texas newspa that the "annexation" which our Congress has transcended its constitutional authority by at. tempting to legalize, will, after all, be conau ted on the terms proposed. News from Texas has been received at New Orleans to the 8 h instant at which time information had reached Texas of the passing of the Joint Resolution by our House of Representatives ; which elicited the subjoined commentaries from papers understood to be exponents of the views of the Government of that country. We copy them just as we find them. Our readers must receive different impression from the perusal of them than we do, if they can imagine any form of annexation what-ever, that the United States could possibly agree to, which would be acceptable to, or accepted by, the authors of these commentaries.

## National Intelligencer.

#### FROM THE GALVESTON CIVILIAN.

The article which we copy to-day from the National Register affords gratifying evidence of return, on the part of the friends of annexation in this country, to a proper sense of self respect. and an understanding of the position which Texas may and ought to assume in relation to the ques. tion. Our friends beyond the Sabine have lost sight of the homely adage that it takes two to make a bargain ; and only studied how to shape measures so as to make the " reciprocity all on one side," until at length their utter selfishness and disregard of the respect due to Texas as an independent nation, which has thus far maintained her nationality rights, and liberties, begins to produce the natural fruits of disappointment and aversion in those of our citizens who had boked to that quarter for a magnanimous and disinterested regard for our welfare and happiness. The helpless and perishing beggar may without hesitation accept the most humiliating conditions from, and agree to become the menial of, him from whom he receives the means of averting famine and death ; but the sturdy yeoman, whose honest industry and strong arm afford him all the means of subsistence and protectio requisi e to his condition and habits in life, may well shun the banquet and the association, if invited into the society of the more woalthy and presuming, when his acceptance is to be coupled with acknowledgments of vassalage and interiority.

FROM THE (TEXAS) NATIONAL REGISTER.

THE PROPOSED ANNEXATION -The Congress of the United States " doth consent that the territory included within and rightfully belonging to and direct taxation, her land in consequence dethe Republic of Texas may be erected into a new have known over 800 saved to the acre repeated. | State, to be called the State of Tezas, with a republican form of government, to be adopted by the people of said Resublic, by deputies in Convention, assembled with the consect of the existing Government, in order that the same may be admitted as one of the States of the Union." cullivation. Plants are easily saved and kept, Such is the language of the first section of the and one bushel is quite enough to plant an resolution which has passed the lower House of the American Congress. What is its import ? The answer is, that we must lay aside our na-

to Texas, is eled out to her at a miser's usury, and is shackled with what lawyers call "conditions precedent." Passing by the required sacrifice of our right to adjust the boundaries of our territor the consent of that Congress even once more to entertain the Texas question is coupled with the cold assurance that if we are ever admitted into the Union at all, we must cede to the United States "all our mines, minerals, salt lakes, and springs ; also, all cur public edifices. fortifications, barracks, ports and harbors, nary and navy yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public de. fence." We must also yield up our revenue and our capac ty to raise one; which single item, under the financial regulat ous of our fuetering step-no. ther, would IT'ng into her Treasury at least the hundr d thrusand dollars per annum. for which we have her kind permission to retain our public dely and our public domain ; subject, however, to the payment of the debt, and circumscribed within such limits an she may hereafter be pleased to assign to our territory, in the exercise of her character istic and far stretching diplomacy. which once reached even to the western banks of the Sabine !-We must, however. truckle to her pet abolitionists by obligating ourselves to prohibit slavery nerth of the paratlet of thirty six degrees thirty minutes known as the Missouri compromise line.

We have a'ways been a warm and hearty ad vocate for the cause of annex tion ; but never dd we dream that the approval of the people of Ter. as would be required to a proposition so absurd. so degrading, as the one propounded by this res. olution. Our space does not now admit of fur. ther detail. Suffice it that we contract our pre. sent elevated position as a people-secure in the respect and amity of the great enlightened nations of the earth ; secure in the enjoyment of peace. and in the speedy acquisition of acknowledged inde pendence ; secure in the wealth which il e com. merce of Europe is about to pour into our lan. and in the increasing value of our lands, attany from extended occupation and the investment a foreign capital ; secure of becoming " the most facored" by those powerful and wealthy sovereign. ties whom both interest and policy impel to cher. ish our prosperity and growth, that their markets may be supplied with our staples; and secure that the increase of commerce will speedily ren. der no less consistent than desirable a great dim. inution of our present tariff-with the alternative presented by this resolution, of Texas, divested of those high privileges and advantages, shorn of her attributes as a nation, crippled in her com. merce, in her prosperity, in her domestic re. sources, depressed in the burdens of public debt preciated in value; and, in the event of final an. nexation upon the proposed basis, our public do. main not only razerd and mortgaged to secure the payment of our debt, but even eriscerated of its mineral wealth to swell the public Treasury.

This is, indeed, but a dim and totally inade. quate view of the actual pit and grave of insig. nificance and infamy into which the llouse of Representatives of the American Congress have proposed to plunge this nation.

" Since he, miscalled the morning star, " Nor man, nor fiend, hath fall'n so far."

" War, (says Channing) adds to suffering the unutterable weight of crime, and defeats the holy and blessed ministry which all suffering is intended to fulfil. The terrible thought is, that the awfol amount of suffering which war has inflicted, has been the work of crime ; that men, whose great law is love, have been one another's butch ors ; that God's children have stained his beautiful earth, made beautiful for their home, with one

with foreign nations would be dissolved, our re- tion of the relator for a peremptory mandamus lations toward them changed; all advantages accruing from past negotiations cease ; for no one can pretend that the great European Powers garb of a suppliant for admission into the family ourselves ! In such a state of national abevance and limbo, we could neither assert a separate independence for ourselves, nor claim any species of alliance or connexion ever known by any name "given under heaven or among men," with any other Government. In such an attitude of mortifying and humiliating indefiniteness, we gay well be disavowed, as a distinct nation,

#### " By all our kind and kin, when they " Compare our day and yesterday.

And, having assumed this equivocal posture, by the consent of the American Congress, "in be admitted as one of the States of the Union, then we are hound unto them, but they are notbound unto us. We are yet again, and for the fourth time, to knock at their door for admission, " on or before the first day of January next," with our new Constitution in our hand, when that Congress will take their final action (for or against, as the case may be) on the subject of our application.

This is the substance and extent of their "guaranties," paraded, as the expression is in the resolution, under the imposing grammatical form of the plural number ! Have we any pledge that we shall then be annexed ? No; they only promise that they will once more consider the proposition, and take what they are pleased to denominate their "final action" upon it. And, udging from the language they now hold, we have nothing more nor less to expect than that they will then " spurn,' us as before-for they can do so without violating any pledge.

But, if we adopt the course indicated by the resolution, we do so under the formal sanction and color of their express consent. This would be a tacit admission on the part of the Government and people of Texas of the authority of that consent, and that would imply at least that we could not lawfully act in the prescribed mode without it -No doubt we should be forced to derrow largely from the efficacy of that same consent, to carry us through the conspicuous part assigned to us in the ridiculous farce that prepared for exhibition. If the people of Texas choose to revolutionize

their Government, and institute some new and acknowledged our title to be recognized as an independent nation, both de facte and de jure --Should we adopt the course designated by their resolutions, we at once lase the benefit of that ac-knowledgment. We pass into a state of imbroile and hopeless dependence upon that Power. To be annexed ! Certainly, never-until their appiring partisans shall cease to need the material we now furnish them for the manufacture of political capital. Our relations with other Governments dissolved, and our own nationality renounced, the United States may consent to hold—as they shall that on Wednesday last, while some boys were fig-have consented to place us—in a state of penulti-mate, but unaccomplished, annexation. But even this come this come along, the leader of which by some means But even this consent of the American Con-gress, meager and valueless as it is to the people boys drew the kite down, and with it the gross, of Texas, but for minich me as it is to the people boys drew the kite down, and with it the gross, of Texas, but for which we are required to give to the United States a lien upon our country's sorcreignty-this worthless consent, as if begrudged . caught in such manner before - Sun.

# [From the Greensbore' Patriot.] DECISION ON THE LICENSE LAW.

The decision of the Supreme Court on the ower of the Justices of the County Court in the administration of the law regulating the Retail. ing of Spirituous Liquore, has been received at the Superior Court Clerk's Office of this County. The subject came before the Supreme Court A. Gillaspie, vs. J. A. Mebane, et al."-and went up on a motion of the relator made before the Superior Court for a peremptory mandamus, to

The Supreme Court decided, that, because this is not a case for a mandamus, the judgment of Under such circumstances, all our connexions the Superior Court must be reversed, and the me. refused.

The opinion of the Supreme Court was delivered by Chief Justice RUFFIN : it is long, covering the whole ground, and defining clearly the powers and duties of the Justices of the County Court in into the Patriot next week. In the mean time in the decision, made out at our request by a friend in the legal profession. It is decided-

1. That the Justices have a discretion to grant or refuse a liceuse ; but that it is a sound legal discretion.

2. That the Justices have no right to resolve that they will grant a license to nune.

3. That the Justices are not bound to grant a license to every applicant who proves hinself in the manner prescribed by the Act of Assembly to be a man of good moral character; but they have a right to refuse a license to a man of good moral character, on account of the place where the tippling shop is to be located, or because the public convenience does not require it, or because a sufficient number hath already been granted to supply the public requirements.

4. That no mandamus will lie from any higher

Court to compel them to grant a license. 5. That if the Justices, on a fit and proper application being made, should from corrupt metives, or from feelings of personal hostility and oppression, refuse a license, they would be liable to indictment.

6 If the Justices should commit an b error in refusing a license, they are in no way liable or amenable.

WIVES CAUGHT BY TRAPS .- It is said that the Winnebago Indians catch their wives by setting traps for them in other words, whenever a young Indian takes a fancy to a squaw he leaves a steel trap in front of her lodge at night. If this is taken in by the father the squaw is not expected to "put ber font" in the matter at all-the contract is not considered settled ; if not, and the

young man deems the coppered colored fair one worth an extra trap, he leaves two, sometimes three. Whenever the trap or traps are taken in,

the marriage ceremony at once comes off. In more civilized society the reverse is some-times the case-the trap is set by the other party.

NEW HAMPSHIRE ELECTION -The New Hamp shire Patriot gives returns from the Congressional election, which show that Mr. JOHN WOODBU-RY. of Exeter, is defeated as a candidate for Con-gress in place of Mr. JOHN P. HALE, ostracidifferent republican organization, they may do so zed for taking ground against annexation. The without the leave of a foreign Government a first Democrats of New Hampshire were called upon had and obtained." But the United States have to sustain the party measure, and Mr. Woopst-By was held up as the representative of annexation in New Hampshire. He has failed of an election notwithstanding the overwhelming strength of the Democratic party in that State, and the tr umphant stand that the Texas party has acquired from the passage of the Joint Resolution. This looks like the breaking forth of light from New Hampshire, which even the most sarguine have hardly expected.

except the land on which the line of road runs, such as the cars, locomotives, supply of wood, timber and iton not laid down, and land purchased for depots ; but it was insisted that it was different

with respect to the land forming the road itself -The exemption of that was claimed upon the ground that, by the sale of it, the corporation itself got nothing ; and so, as the law does nothing in vain, and especially when attended with such dostructive consequences, it was inferred that there could be no such sale. But the position is not true, that the corporation is desolved by the sale of a part of the road, nor, indeed, immediately upon the sale of the whole mad, as it seems to us. It may because of forfeiture, if invisted

hesitation in saying that the public ought and would promptly yield. If the public should insis, upon its rights, then it is bound to make compensation to be creditor out of the treasury ; for it ought not to,sut er him to remain unpaid for executing what is clain ed

as a public work. But no such obligation has eger been supposed to lie on the State ; simply for the r dground that, by the sale of it, the corporation itself ceased, so that co instanti the land reverted to the former owner, and, consequently, the purchaser through the instrumentality of an execution served upon its property. We do not know, wherefore he company did not pay the debt for which this sale i as made. But whether it arose from want of inclina) on or ability, the fault or misfortune is their's; and he State never could have intended to interpose and screen either a solvent or insolvent company from the payment of its debts. If the corporation be insolvent. it must, like every other insolvent debtor, give my ite property, unless the State either assumes its debts of Therefore, it is clear, that this land is liable to execution, unless it be exempted therefrom either by the express provision of a statute, or the use by the express provision of a statute, or the use

another's blood ; that the shriek which comes to us from all regions and ages, has been extorted by human cruelty ; that man has been a demon. and has turned earth into hell."

The struggle of JOHN C. CALBOUN for a better position is not inaptly compared to that of Fitz are when we remember the position he now holds towards the new Administration :---

"Twice have I sought Clan Alpine's glen In peace-but when I come again. I come with banner, brand and bow, As leader seeks his mortal foe."

We shall see what Mr. Calhoun will do when he comes again, " with banner, brand and how." So far his comings have all been the short-comby the express provision of a statute, or the ne- But, by the express provision of the Statute, it re- is rail road, it may either snable this corporation to a ver is but always to be blost,"-N. Y Express.

A SINGULAR CIRCUMSTANCE-We are told which they secured and have now in possession We venture to say that never was wild goose