THE OLD North State.

VOL. IV.] SALISBURY, N. C., JULY 30, 1869. [NO. 30

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July 9, 1869. 27—4w

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Chapel Hill, July 6th, 1869. 37—6w

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Pleasant Grove, N. C., June 25, 1869. 25—3m

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June 18, 1869. 24—6w

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Pupils can enter at any time and be charged from the time of entrance.

The rates of tuition will be as follows: $7.50 $10.00 and $15,000 per session of 5 months payable at the end of every month.

No pains will be spared to give pupils a thorough training in all the branches usually taught in a first class Academy.

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" Thomas Settle, " " "
" R. P. Dick, " " "
" Bedford Brown, Yanceyville, N. C.
" Hon. John Kerr, " "
" J. R. McLean, Greensboro', N. C.
" Thomas Ruffin, Jr., " "
" J. M. Cloud, Dobson, N. C.

January 29, 1869. 4—tf

JOHN S. HENDERSON,

ATTORNEY & COUNSELLOR AT LAW,

SALISBURY, N. C.

☞ Will attend promptly to the Collection of Claims feb26—1y

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HAVING resumed the practice of Medicine respectfully offers his professional services to the public.

OFFICE: The one late occupied by Whitehead & Henderson. Calls may be left either at his office, or at Enniss' Drug Store.

Salisbury, Feb 12, 1869. 6—6r

Dr. I. W. JONES,

HAVING located in Salisbury, offers his Professional services to the public. Office on Council Street, opposite the Court House and next door to the Law office of Hon. Burton Craige. May 28, 1869-tf.

Raleigh National Bank of N. Carolina.

THE DIRECTORS have resolved to increase the Capital Stock of this BANK to FIVE HUNDRED THOUSAND DOLLARS. Persons wishing to subscribe to the same will please communicate with

C. DEWEY,

March 5—6m. President.

The Old North State

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LEWIS HANES

Editor and Proprietor.

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CONSTITUTIONALITY OF THE HOMESTEAD ACT—OPINION OF THE SUPREME COURT, IN THE CASE OF HILL vs. KESLER, FROM ROWAN, DELIVERED BY JUDGE READE.

The question involved in this case is whether the provision in our State Constitution exempting certain property from execution sale, impairs the obligation of pre-existing contracts.

The provision of the Constitution is as follows:

ART. X. SEC. 1. The personal property of any resident of this State to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any Court issued for the collection of any debt.

SEC. 2. Every Homestead and the dwelling and buildings used therewith, not exceeding in value one thousand dollars to be selected by the owner thereof, &c., shall be also exempted.

There has been suitable legislation to carry out said provision.

We concede that if this exemption impairs the obligation of contracts, either expressly or by implication, it is against the Constitution of the United States and therefore void.

The obligation of a contract is the duty of its performance according to the terms thereof.—Any act which alters its terms, or enables either party, without the consent of the other to alter or evade its terms, impairs its obligation and is, therefore void. A promises to pay to B $100 on a given day. An act requiring him to pay a day later, would alter the terms as to time and impair the contract. So an act requiring him to pay $101, allowing him to discharge the debt with $99, would alter terms as to the amount, &c.

We concede, also, that a contract must be understood to be made with reference to existing laws for its enforcement. And if, at the time of the contract, there are laws in existence for its enforcement, it is the same as if the State were to say to the parties, there are now and so there shall continue to be, laws to enable each party to enforce the contract. And after such assurance, if the State abolish, or injuriously change the remedy, it would be violative of the Constitution of the United States and therefore void.

The contract in this case was made before the constitutional exemption, and, therefore, when the debtor agreed to pay the creditor a certain sum, we are to enquire what was the remedy for the enforcement of that contract?

It was to sue him, get judgment, issue *Fi. Fa.*, levy upon and sell such property as he might have subject to execution. Observe, not levy upon and sell any particular property, or all he might have; but only such as might be *subject to execution.* What is his remedy now under the Exemption Law? It is, to sue him, get judgment, issue execution, levy upon and sell such property as he has subject to execution. What is the difference in the remedy then and now? There is not only no injurious alteration, but there is no alteration at all, so far as the proceedings are concerned.

It was formerly the case that, when a creditor got his judgment he had two remedies; one, the levy upon and sale of property, and the other the imprisonment of the debtor. The Legislature abolished the remedy by imprisonment, which often brought the money, when nothing else would, leaving only the remedy against the property. And then it was contended that the abolishment of the remedy of imprisonment impaired the contract. But the Courts in repeated cases, decided otherwise. The true import of the law being, not that the parties should have any particular or specific remedy, but a substantial and convenient one. In what way does the Constitutional exemption alter or impair the contract which these parties made? How is the remedy changed? What was the law at the time of the contract, and which became a part of it? Was it that all or any portion of the property, which the debtor had at the time of the contract should be liable to execution sale?—Was that the creditor's security for his debt?—Certainly not. The contract was personal and a lien upon nothing. Else, now would it be if the debtor had no property? or, if he had any, how would it be if he should sell it? Or, how would it be with property acquired after the contract? Or how, if a subsequent and more vigilant creditor should get ahead, and take the whole in execution? Or, in case of the debtor's death, how would the widow get dower, or a year's provision? Or, how would funeral expenses have the preference over all other debts? Those considerations make it plain, that no such element enters into the contract, as that any particular property which the debtor has at the time of the contract, or which he may subsequently acquire, shall be liable to execution sale; or that any particular remedy is guaranteed. The guaranty is that the contract shall never be altered by law and that there shall be a remedy to enforce it. And the contract is made, not only with reference to the remedy existing, but also to such reasonable changes as the interest of society require, and the State may think proper to make.

Against this view, it is contented, that there are express decisions to the contrary. If there be such by the Courts of our sister States, they are entitled to respectful, and if by the Supreme Court of the United States or by our own Court, they are entitled to the highest condition.

The cases most pressed upon our attention in favor of the creditor are Bronson vs. Kinzie, 1 Howard 311, and McCracken vs. Haywood, 2 Howard 608, both decided by the Supreme Court of the United States. Bronson vs. Kinzie, where it was provided in a mortgage deed, that if the money secured was not paid at a given time, the mortgagee might enter and sell. And the Legislature of Illinois passed an act to the effect that the mortgagee should enter and sell, upon certain conditions, not specified in the contract.—This was clearly an alteration of the contract and impaired its obligation. *It changed the contract of the parties.* But, how is the contract changed in our case? Not at all. It stands word for word, as the parties made it. And so too, the remedy, as we have seen, stands word for word.

The other case, McCracken vs. Haywood, arose under an act of the Legislature, which allowed the contract to stand, and the remedy to stand, except that it provided, that when the property levied on should be offered for sale, it should not be sold unless it brought two-thirds of its appraised value. The property was offered for sale and would not bring the price. What then was the Court to do? The act applied to all the property the debtor had, and to all he might acquire. So that, whether he had much or little property, it could not be sold, and by no possible means could the creditor make his money. Clearly here was a deprivation of all remedy. But how is it in our case? The exemption does not cover all, but only *so much* of the debtor's property, and does not exempt his future acquisitons. It does not clog the execution sale with unusual terms, which was the ground upon which McCracken and Haywood was decided, but leaves it unembarrassed. And if it should happen, as in our case, that all the debtor's property falls under the execution, it was not within the purview of the Constitution that it should, but it is only the "*accident,*" of the debtor's property, and does not affect the law. In the case of McCracken vs. Haywood, the Court ordered the property to be sold for what it would bring, as the *only* remedy left to the creditor. Our attention was also called to an elaborate opinion of Judge Carpenter, of the Circuit Court of South Carolina, Purcell vs. Whaley, reported in the newspapers, declaring the exemption laws of South Carolina, which are substantially the same as ours, unconstitutional and void. The authorities relied on by the learned Judge were among others of less importance, the aforesaid cases of Bronson vs. Kinzie and McCracken vs. Haywood, and we have seen they do not sustain him.

Another case cited by him and directly in point for him, is Dank vs. Guackenbush, 3 Denio 594, decided first by the Supreme Court and then by the Court of Appeals of New York.—But the attention of the learned Judge was not called to the fact, that, in that case, the Judges in the Court of Appeals were equally divided, and, therefore, the decision in the Court below stood; nor to the more important fact, that, in a subsequent case in 1854, in the same Court, Morse vs. Gould, 1 Kernan 281, the case of Dank vs. Guackenbush was received and overruled.—Again, the case before Judge Carpenter did not involve the point whether the Exemption Laws impaired the obligation of contracts, and, therefore, his opinion upon that question is only a *dictum.* He states the principles involved in the case as follows: "The judgment was by law a vested right, a lien, a contract. Had the State the Constitutional power to divest the plaintiff of his rights, and vest them in the defendant?—Upon the principles involved in the case, there is no difference between liens by mortgage, and by judgment, the former of specific, the latter general; but both are vested, legal rights," &c. It will be seen, therefore, that the question involved was not that of impairing the obligation of contracts, under the Constitution of the United States; but of destroying liens and invading vested rights, under the Constitution of South Carolina. There is nothing therefore in that decision against any position, but the *dictum* of the learned Judge; for it not pretended that in our case, there was any lien or vested right, we are not therefore interested to inquire, whether the learned Judge's decision, that "liens" and "vested rights" cannot be abolished by a State Convention in framing their organic law.

Our attention was called also to a decision of Judge Orr, of the Circuit Court of South Carolina, reported in the newspapers, sustaining the South Carolina Exemption Laws.

We are not aware of a single decision except as before stated, either in the Courts of our sister States, or of the United States, in which general exemption laws have been held to an infringement of the Constitution of the United States. There being no decision against them, let us see if there are any in their favor.

The Legislature of New York, in 1842, passed an act, exempting from execution—in addition to former exemptions—"necessary household furniture, working tools and team, not exceeding $150 in value." The creditor obtained a judgment upon a debt existing before the act, and levied on the debtors team, a pair of horses. And the question was, whether the exemption was good against pre-existing debts. The opinion of the Court was elaborate and able, that the exemption was good, Morse vs. Gould *supra.*—The opinion is the more important as it re-revived and overruled a former case in the same Court, Dank vs. Guackenbush, cited by Judge Carpenter.

It also re-revived the cases of Bronson vs. Kinzie and McCrackin vs. Haywood, and indeed all the cases bearing on the subject, and distinguished them from that, as we have from this. In a late case in 9 Wisconsin, 559 Baumback vs. Bade, the case of Morse vs. Gould, *supra,* is revived and approved. And in Bronson vs. Kinzie. Taney, C. J. says: A State Legislature may, if it think proper, direct that the necessary, implements of agriculture, or the tools of a mechanic, or articles of necessity in household furniture, shall, like wearing apparel, not be liable to execution on judgments: and regulations of this kind have always been considered in every civilized community as properly belonging to the remedy, to be exercised or not by every sovereignty, according to its own views of policy, or humanity. It must reside in every State, to enable it to secure its citizens from unjust and harrassing litigation, and to protect them in those pursuits, which are necessary to the existence and well being of every community."

And in a subsequent case Planter's Bank vs. Sharp, C. Howard 301, Mr. Justice Woodbury in ordering the opinion of the Supreme Court of the United States enumerated exemption laws, among the examples of legislation, which might be Constitutionally applied to existing contracts. And in Biglow vs. Pritchard 21, Pickering, the Supreme Court of Massachusetts decided that the Legislature might lawfully diminish the creditor's remedy to enforce judgment, by exempting a part of the property of the debtor from attachment on mesne process, or levy of execution, for example, articles of furniture, bed and bedding, &c., necessary for a debtor and and his family. And in Morse vs. Gould, *supra,* it is said, that general exemption laws are valid "though a case might happen, possibly, where the exempt property would constitute all that the debtor possessed." And in a late case, Stephenson vs. Osborne, 41, Miss. 119, reported in the April number of the American Law Review, p. 476, the Supreme Court of Mississippi decided that the Mississippi exemption law "was Constitutional as to contracts existing at the time of its passage." We have a decision of our own Court directly in point. In Dean vs. King 13, p. 20, the Court decides, Ruffin, C. J. delivering the opinion, than an exemption of a "mare and five hogs," under the act of 1848, was good against a debt contracted in 1846.

The case of Dean vs. King was this: The exemption laws of 1844, applied to debts contracted after 1st July 1845, and it was insisted that the debt in that case was *contracted* before 1st July, 1845, although the bond for the contract was not executed until 1846. The Court said the exemption was not made under the law of 1844, because "a mare" was not embraced in that law, but it was made under the act of 1848, and that it was valid. It is true, that it does not appear that it was objected, that the exemption act of 1848 could not apply retrospectively, but it could not have escaped the attention of the Court, nor of two eminent counsel who argued the case, that an exemption law of 1848, applied to a debt of 1846, did operate retrospectively as to the debt affected by it.

We have, too, our Legislative construction, and the practice of our Courts under it, for the last twenty days. The Revised Code, adopted in 1856, makes the exemption of: "one cow and calf, ten barrels of corn or wheat, fifty pounds of bacon, beef or pork, or one barrel of fish, all necessary farming tools for one laborer, one bed, bed-stead and covering for every two members of the family, and such other property as the freeholders may deem necessary for the comfort and support of such debtor's family; such other property not to exceed fifty dollars," apply to all debts contracted since 1st July, 1845. It is true that, by the act of 1844, some of these articles were exempted, but the bulk of them were not embraced in any exemption act until 1848, and yet they were made to apply to debt as far back as 1st July 1845.

So in 1866-'7 our Legislature passed an act exempting: All necessary farming and mechanical tools, one work horse, one yoke of oxen, one cart or wagon, one milch cow and calf, fifteen head of hogs, five hundred pounds of pork or bacan, fifty bushels of corn, twenty bushels of wheat, and household and kitchen furniture, not exceeding $200 in value."

And this was not restricted to subsequent contracts, which is the more significant, as by the same act a Homestead of one hundred acres without regard to value, was restricted to subsequent debts. So that exemptions applying to antecedent debts have had the sanction of our Legislature and of this Court and of the practice of all the Courts for the last twenty years. But then it is said that while that may have been so in regard to *accessories,* yet our exemptions are too large, they are not necessaries. If it be conceded that the Legislature has power to exempt any thing as to existing debts, then what are necessaries is a question for the Legislature and not for the Court. But our exemption laws heretofore, have not been restricted to mere necessaries, but have looked to the "comfort and support of the debtor's family." Rev. Code, *Supra.* And the exemptions have been repeatedly and considerably increased, to keep pace with the change of manners and customs and the condition of our people. It will readily appear that the late exemptions of personal property, in many instances, might greatly have exceeded $500. If the Legislature can exempt personal property, it is not pretended that it may not in like manner exempt real catate—a homestead.

It is objected that the Homestead law ought not to be construed to operate retrospectively. We admit that this is a general rule of construction; with an exception, however, in favor of remedial, and as sometimes called beneficial laws. All our laws in regard to remedies and procedure, have been lately altered by the new Code of Civil Procedure, and made to act retrospectively. No debt, no matter when contracted, can be sued for and recovered now as before the Code. Even the Courts themselves have been changed.

By the act of 1808, a summary remedy, by motion for judgment on ten days notice was given against Sheriffs for collecting money and failing to pay over. A motion was made against a Sheriff for an antecedent liability. It was objected, that the act did not operate retrospectively. But this Court held the contrary, saying that, "when an act takes away, from a citizen a *vested right,* its constitutionality may be inquired into; but when it alters the remedy or mode of proceeding as to rights previously vested, it certainly runs in a constitutional channel. The acts are beneficial and should be favorably construed. Oates vs. Darden, 1 Murphy 501.

So a State Legislature may discharge a party from imprisonment upon a judgment in a civil action, without infringing the Constitution; for this is but a modification of the remedy, 3 Story on the Con, 251, Mason vs. Haite, 13 Wheaton, R. 370.

A Statute changing the rules of evidence may be applied to pending suits. Cooly Con. L. 381.

So a statutory privilege is not a vested right, as exemptions of persons or property from taxation; or exemptions of property from being seized by attachment, or execution, Id. 383.

So Homesteads, or other property which are now exempt under the Constitution might be made liable by a subsequent Convention, Id. N.

If, therefore, the Homestead Laws were not retrospective *in terms,* yet, as they are remedial, beneficial laws, interfering with no vested rights and are a part of the fundamental law of the land, they ought to be liberally construed in favor of the person to be benefitted. But we think they do not depend upon *construction.* The plain words are that they shall apply to, "any debt"—all debts. And it is only by construction, and we think an erroneous construction, that they can be restricted to any particular class of debts.

But really the Homestead and exemption laws, although affecting antecedent debts, are not retrospective in the proper sense of that term. What would be a prospective Homestead law? Evidently that which allow a Homestead *to be laid off hereafter.* What, as contra-distinguished from that, would be a retrospective Homestead law? Evidently that which makes valid a homestead which *has been laid off heretofore.* The great error is in supposing that the Homestead law is a law to defeat debts. That is no part of the object of the law. The laying off a Homestead is the sole object and is prospective altogether. If any debt is affected by it, it is merely incidental. It may be conceded therefore, without affecting the Homestead, that any law, the purpose of which is to defeat a debt, is void. But the Homestead law declares its object upon its face to be, not to defeat debts, but, to allow to every resident of the State, "and his children" and his "widow" a home and the means of living, if they have them. It is a question, not of defeating debts, but, in the language of Chief Justice Taney, "it is a question of policy and humanity, which every civilized community regulates for itself.

Its wisdom or folly, justice or injustice, a question for the law making power, and not for the Courts. In our case, the law has the sanction of the Convention and of the Legislature, and of the direct vote of the people in adopting the Constitution, and of the Congress of the United States which approved the Constitution. And, as it is not in contravention of the Constitution of the United States, it would be an assumption of extraordinary power for us to declare it void.

With the policy of these exemption this Court has nothing to do. If they are within the power of the Legislature then it is sufficient for us that, "thus it is written."

We have not thought it necessary to notice the suggestion, that inasmuch as the sale of lands under execution is by Statute, so it may be exempted by Statute.

No question arises in this case as to the interference with vested rights under our State Constitution, because the exemption is a provision in the Constitution itself. The only question is, whether it impairs the obligation of contracts, under the Constitution of the United States.—Jacob vs. Smallwood, 63, N. C. R. This will be certified, &c. Judgment reversed.

READE, J.

DISSENTING OPINION DELIVERED BY CHIEF JUSTICE PEARSON UPON THE CONSTITUTIONALITY OF THE HOMESTEAD LAW, IN THE CASE OF HILL VS. KESLER.

The express prohibition of *ex post facto* laws is confined to criminal offences, but the broad principle of justice on which it rests, extends as well to civil rights, and it is a settled rule of construction, that a retrospective effect is never to be given to a law, unless the words used admit of no other meaning, and show beyond question, that past transactions are within its operation; "general and vague words have never been allowed to have that effect. Broom's Legal Maxims, 41.

In our case, the words in the Constitution are, "shall be exempt from sale under execution for any debt." Very comprehensive, but at the same time very indefinite. The statutes carrying out this Ordinance, adopt the same words without explanation; giving to them the meaning of "any debt" hereafter contracted, there is no injustice, for people will know who is to be trusted, giving to them the meaning of any debt, as well debts heretofore as debts hereafter contracted, there is gross injustice and a violation, not only of the ordinary notions of honesty, but of a fixed principle of the common law, reaffirmed by statute law, 13 Eliz: "all gifts or voluntary conveyances of his property by a debtor are void as against existing creditors," on the ground of *fraud.* I hesitate to gives to these indefinite words a construction, which imputes to the law makers a fraud of existing creditors; of property, on the faith of which he received credit, and of which he cannot, by law, make a voluntary conveyance to another. Courts are to be governed, not by what the draftsman of a law is supposed to have meant, but by what the words used mean, according to the settled rule of construction.—This maxim should especially be adhered to, when the law is submitted to a vote of the people, for it is not decent to suppose that indefinite words were used that some might vote for it, giving one meaning and others another.

II. "No State shall pass any law impairing the obligation of contracts." These comprehensive words are not confined to a prohibition against altering the terms of a contract; but also forbid, impairing its *obligation.* What is the obligation of a contract? The means of compelling performance, according to the laws in force, at the time the contract is made: by those laws the parties agree to abide; by these laws their rights are fixed. This is the obligation which must not be impaired by a State, whether acting in Convention or in General Assembly.

We are told "There are now, and so there will continue to be, laws to enable each party to enforce the contract, and after such assurance, if the State abolish or injuriously change the remedy, it would be violative of the Constitution of the U. S. therefore void."

In this I fully concur, and the question is, not confusing the subject with a multitude of cases, or with many words, does or does not the "Homestead Exemption" of $500 personal property and $1,000 value of land, injuriously change the remedy and alter the laws in force at the time the contract was made? In other words, is not the *obligation* of this contract impaired by the Homestead Exemption?

It is set out in the record, that besides the property exempted, this debtor has nothin; so the contract cannot be enforced and its obligation is *destroyed,* not simply impaired.

It is said, "the remedy is not at all changed, for the creditor can take judgment and issue a writ of *fieri facias,* just as he could have done when the contract was made." All this is very true, and it is equally true that in nine cases out of ten the Sheriff will return on the *fieri facias* "nothing found, except property exempted by homestead law." This is the shadow, but not the substance. The creditor trusted to the property which the debtor had at the time of the contract, as the means of enforcing it, and to the law by which a voluntary conveyance is declared fraudulent and void; that was the obligation; the thing that binds. And yet it is held, as I think, under the unconscious bias of pressing circumstances, "that a law which bestows this property on the debtor, to the injury of exiting creditors, does not impair the obligation of contracts."

It was urged on the argument; By the common law, wearing apparel, arms for muster, tools of a tradesman, and a bed and furniture, are exempted, (these articles were not looked to and were included in the obligation) then by statute, certain other articles, i. e. Bible, Hymn Book and School Books, and finally a horse, not to exceed in all, the value of $200, were exempted. Now, because creditors did not choose to make a point about these small matters, that is relied on, as fixing the power of the General Assembly to make exemptions against existing debts, and the power being thus established, the extent of its exercise is a matter of legislative discretion: "give an inch and take an ell."—First, assume the power to exempt a bible, hymn book, and school books—then a horse, may be added, then $200 worth of property, then $500, then $1500, including land, then 5,000, and then exempt everything, for there is no limit save legislative discretion. Indeed the statute under consideration I believe exempts everything owned by debtors in nine cases out of ten.

In reply to the argument drawn from legislative sanction, one fact counterbalances the whole. In 1822 the Legislature deemed it wise to modify the law of imprisonment for debt, as an obligation of contracts; after full discussion the act provides, "any person arrested under a *capias ad satisfaciendum* for any debt, contracted after the 1st. *day of May next,* may give bond to appear," and shall not be confined in jail, as before.

I am aware, that in several of the States, decisions have been made, sustaining homestead laws. These cases all rest on the fallacy of assuming the power to make exemptions to some extent and then on the idea of legislative discretion, the amount is swelled up to thousands; and it is justified on the ground of "keeping pace with the progress of the age," a progress, in this particular, I fear of dishonesty and fraud, I choose to rely on the cases in our own Court. Jones vs. Crittenden 1 Car Law Rep. 385.—Barnes vs. Barnes 8, Jones 366.

SUPREME COURT.

IN THE CASE OF THE UNIVERSITY RAILROAD COMPANY VS. W. W. HOLDEN—OPINION BY CHIEF JUSTICE PEARSON—BONDS FOR BUILDING NEW RAILROADS DECLARED UNCONSTITUTIONAL.

Mandamus dismissed. Power of taxation discussed. Held that the equation in Art. 4. Sec. 5. does not apply to the old debt, to debts contracted in aid of *unfinished* roads. No power to build *new* roads without submitting the question to the people. No limit to power of Counties to levy taxes for necessary expenses, designated in Art. 7. Sec. 3. provided they obtain special law of the General Assembly, and they need not be submitted to a vote of the people.

OPINION OF CHIEF JUSTICE PEARSON.

I. I incline to the opinion that the act entitled "An act to incorporate the University Railroad Company," does not have, in law, the effect to create a corporation. To give legal effect to a grant, there must be a grantor, a grantee, and a thing granted. Here we have a grantor, the General Assembly; a thing granted, corporate powers and franchises "to the same extent as are possessed by the North Carolina Railroad Company;" but ther is no grantee—no person, persons, or body politic to whom the grant is made. If this be so, it would seem to follow, that the directors who are to manage affairs of said "University Railroad Company;" (there being in contemplation of law, no company) cannot have such rights as are enforced by the writ of *mandamus.*

II. In my opinion, by the proper construction of art. 5, sec. 5, of the Constitution, the General Assembly has no power to contract a debt to build a *new* Railroad, unless the subject be submitted to a vote of the people. It is decided [Galloway *vs.* Jenkins, 63. N. C.. rep. 147] the General Assembly has no power to contract a debt, without a vote of the people, *to aid* in the construction of a new railroad. If the General Assembly has no power to contract a debt, for the purpose of building a new railroad, with the assistance of contributions by individuals, county subscriptions, and subscriptions by other railroads, it would seem it cannot have power to contract a debt, for the purpose of making a new railroad out and out. A prohibition not to contract a lesser, surely amounts to a prohibiton not to contract a greater debt for the same object. The evil which the Constitution seeks to prevent, is not that of giving aid to individuals or corporations in the construction of railroads; but the evil is, that of contracting *new* debts on the part of the State, the existing debt being almost two heavy to bear, and the credit of the State totering under the load. A construction by which new debts may be contracted on a larger scale than one expressly prohibited, is not admissible upon any principle of law. As this is a deduction from Galloway *vs.* Jenkins, in which the Court was divided, I will put my conclusion, also, on the construction of all the provisions of Article 5.

III. The act under consideration is in violation of the Constitution in this: the tax levied by it disturbs the proportion which, by the Constitution, capitation tax must bear to the tax on the value of property, to wit: "*The tax on a poll shall be equal to the tax on three hundred dollars worth of property.*" Here we have the proportion. Then follows a provision: "The State and county taxes combined, shall never exceed *two dollars on the head,*" and the necessary effect is, that the State and county tax on the value of property shall never exceed two dollars on three hundred dollars worth of property; and the effect also is, that if the tax on poll is less than two dollars, then the tax on three hundred dollars worth of property must be less in the same ratio. In other words, the tax on the poll is "*the standard*" by which the tax on property is to be levied.

Under two dollars, the power to levy a poll tax for State auroses is unlimited: *this interest* needed no protection, for it has a full representation in the General Assembly.

Counties are protected by Sec. 7, which provides "taxes levied for county purposes shall be levied in like manner with the State taxes, and shall never exceed double of the State tax, except for a special purpose and with the special approval of the General Assembly.

Cities, towns and *townships* are protected, [Art. 7, Sec. 7.] which provides, "no debt shall be contracted, nor shall any tax be levied except for necessary expenses, unless by a vote of a majority of the qualified voters therein."

The only remaining interest is that of *property holders* in respect to State and county taxes. This interest is protected by the equation fixed between capitation tax and tax on property. A statute which disturbs this equation breaks down the safeguard thrown around property by the Constitution. If it can be done to the extent of one hundredth of one per cent., it may be done to the extent of one tenth, and there is no limit.

It was urged on the argument, this equation applies only to taxes levied for current expenses of the State and counties, and has no reference to taxation, necessary to pay the interest of the public debt, or the tax to be levied to pay the interest of any new debt.

1st. I agree that, if, under this equation, carried to its limit, the amount is not enough to meet current expenses, and also to pay the interest on the public debt, then for the excess needed it is not only within the power, but it is the duty of the General Assembly to disregard the equation; for this protection to property must be taken to be subject to the injunction, "to maintain the honor and good faith of the State untarnished in regard to the public debt," [Art. 1. sec. 6,] and by sec. 4 of the article under consideration, it is ordained, "The General Assembly shall, by *appropriate legislation and adequate taxation,* provide for the payment of the interest on the public debt, and after 1880 it shall lay a specific annual tax, as a sinking fund, to discharge the principal."—I do not adopt the extreme position taken by Mr. Haywood, that by a *specific* tax is meant a tax on land by the acre or on horses and cattle by the head. It is enough to admit, that this tax is to be independent of the equation: as in sec. 7 a tax for special county purposes, with the special approval of the General Assembly, may be levied without reference to the equation.

2. But I do not agree to the position, that the tax required by sec 5. to be levied to pay the interest on on any new debt, is not subject to the equation; and that the power to tax property in reference to *new debts is unlimited,* save by the discretion of the General Assembly. There is nothing, as we have seen is the case in regard to taxation to meet the interest and principal of the existing debt, to take this taxation out of the equation. Its being called a *special* tax cannot have that effect; for sec 8 requires that every act shall state the special object to which the tax is to be applied. On the contrary, it is included in the equation by every rule of construction.

This fixed equation between poll tax and and property tax, gives significance to the proviso in the first clause, section 5. "No new debt shall be contracted in behalf the State, *unless in the same a special tax* is levied to pay the *interest annually.*,,

If the purpose was simply to keep up the price of State bonds, this would amount to but little—such a tax is very easily put in a bill—but consider the purpose to be to restrain the power of taxation in regard to property by reference to the equation before fixed, so that the special tax on property cannot be levied, without making corresponding increase in the capitation tax, and this proviso amounts to a very important practical limitation, on the power to tax property, and must have a very decied effect in checking a disposition to contract new debts.

And the exception in regard to "supplying a casual deficit," and for "suppressing insurrection or invasion," in which cases the equation may be disregarded, speaks volumes and shows that more was intended, in requiring a tax to be levied in the *same bill,* than simply to put the draftsman to the task of adding a clause to the bill. It is only in exigencies that this safeguard to property is not to be observed.

Except out of the operation of section 1, the taxation that may be "appropriate and adequate" to meet the interest and principal of the existing debt; except also out of its operation the taxation necessary to meet the interest and principal of such new debts as shall be contracted in behalf of the State, and the effect will be to emasculate the section and fritter it away to nothing. Only current expenses are left, for it to operate on; and these expenses may be met by the tax on trades, professions, franchises and incomes [sec. 3] which are not embraced by the equation. So by the construction contended for, this supposed protection to property holders, is made void and illusory, and after all amounts to nothing.

On the argument, it was also urged: the bill levying this tax on property, to pay the interest of the debt to be contracted for the University Railroad, was passed several days *before* the bill called "the Revenue Act," which fixes the capitation tax at 1.05 cents on the head, and the property tax at 35 cents on the $100 worth, observing the equation of taxation; and if this equation must be adhered to, the effect will be, either to nullify all the taxation of the session, or to displace *pro tanto* a part of the tax on property in the revenue bill, in order to make room for the tax on the University bill "*prior est in tempore,*" &c.

I do not concur in either of the conclusions. All of the bills, of the same session, are to be taken together. The revenue bill being in exact accordance with the Constitution, must take effect, and it specially appropriates the amount to be raised under it, to the annual expenses of the State government, and to the payment of the interest of the public debt. So the scope of the legislation is: If the General Assembly has power to lay a tax to pay the interest on the debt for the University R. R. without being limited by the equation, then the tax is to be levied. Otherwise it will fail as being levied *ultra vires,* and the General Assembly assumes an unlimited power of taxation.

Several cases were supposed in the argument, but they all involved the fallacy, that the General Assembly and County Commissioners have an *independent* power to tax property to the extent of 66⅔ cents on the $100 value, whereas, there is no such power, and the right to tax property depends on the capitation tax. Both must be exercised jointly, in order to preserve equation of taxation.

Order in the court below reversed and *mandamus* dismissed.

PEARSON, C. J.

SPECIAL NOTICE.

RELIEF FOR THE SORELY AFFICTED

It was the misfortune of the undersigned to have suffered, as few have every suffered before, for six long and gloomy years, from an affection of his feet and legs, superinduced by overwork, during the first year of the late war. During all that time, he was compelled to drag his emaciated frame about, on crutches. In vain he invoked the best medical talent of the country; and visited the most celebrated medicinal Springs. Worn down and exhausted, he gave up all hope of recovery. At this stage of his case, having been governed by his medical friends from the beginning, he determined to adopt a method of treatment, the result of his own reflection. It is enough to say, that this method is not so much new, as it is, the more skillful application of what has been long known, and attempted by the Physicians.

After some weeks of the most unwearied and persevering efforts, he was rewarded with the most gratifying results. Indeed, his rapid improvement and recovery, was almost magical—so much so, that in looking back upon his condition a year ago, he can, even now, hardly realize the truly wonderful improvement.

Profoundly grateful for this extraordinary blessing, he is desirous of being the means of diffusing similar benefits to those who may be similarly afflicted. He therefore, proposes not only to treat, but CURE, all manner of diseases of the lower extremities, such as old and ill-conditioned Ulcers of the legs; Varicose Veins; weak and enlarged Joints, &c., no matter of how long standing.

It is one of the great advantages of his mode of treatment, that no restrictions are imposed on the patient, as regards diet, exercise, &c., and for the most part, little or no medicine is used.

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EDWARD SILL, M D

Feb. 12—tf Salisbury, N. C.

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