RALEIGH REGISTER, AND North-Carolina State Gazette.

Ours are the plans of fair delightful peace,
Unwarp'd by party rage, to live like brothers.

VOL. VII. MONDAY, JANUARY 27, 1806. No. 331.

State of North-Carolina,
Edenton District.
Superior Court of Law & Equity,
October Term, 1805.

Penelope Lowther, adm'r of Wm. Johnston Dawson, dec. *complainant*,
vs.
James Glasgow, *defendant*.
IN EQUITY.

THE Defendant in the above Cause having failed to appear and put in his Answer to the Complainants Bill of Complaint, and it being made appear to the satisfaction of the Court, that the said James Glasgow is an inhabitant of another State: It is therefore ordered, that unless he do appear and put in his Answer to the said Bill of Complaint, on or before the first day of our said Court of Equity, to be held for the district of Edenton, at the court-house in the town of Edenton, on the sixth day of April next, that the said Bill shall then be taken pro confesso, and set for hearing ex parte. And it is further ordered, that the Clerk and Master of this Court do cause this order to be published in the Raleigh Register for the space of two months successively, that the said Defendant may have notice thereof. *By order*,
ALEX MILLEN. C. & M. E. E. D

For Sale,
THAT VERY VALUABLE TRACT OF LAND,
IN THE STATE OF TENNESSEE,

WHich was granted by the State of North-Carolina to Gen Jethro Sumner in consideration of his military services. It contains 10,000 Acres, or thereabout, free from dispute of any kind, embraces the head waters of Big Harpath, Mill Creek, Arrington's Creek and Stuart's Creek, and is fully equal, if not superior in fertility, to any other Tract of equal extent within the Military Boundaries. Land conveniently situated in this state, or Property of almost any other kind, will be received in Payment. Or if one-third of the value is paid down in Cash, a convenient Credit will be given for the remainder, the purchaser giving Bond bearing interest from the date, payable annually with approved Security.

Persons disposed to purchase, may hear the Price, and be more particularly informed of the conditions, by applying to Thomas Blount, at this place, or to Willie Blount or John Strother, at or near Nashville.

Thomas Blount.
Thos. E. Sumners.

Tarborough, N. C May 2, 1805

A HOUSE FOR SALE
In Raleigh.

THAT large and convenient two story HOUSE, handsomely situated on Hillsborough-street, within a hundred yards of the State House, occupied by Joseph Ross, with the Lot and Appurtenances thereto belonging, will be disposed of on reasonable terms.

There are three good Rooms below Stairs, and three above, with Fire-places to each,

There is a large Garden, well fenced, and a good Well in the Yard, courbed with Stone; and the House has been recently painted and put in complete repair.

Also, with the House or separate, on unimproved LOTS in the rear of the above Premises.

☞ The terms of Sale may be known on application to Joseph Ross in Raleigh, or to Andrew Fleming in Halifax.

FOR SALE,
THE EAGLE TAVERN, in the Town of Halifax, now in the possession of Mr Joshua Hopkins. The House is commodious, having a good dining-room and a number of bed-chambers, a good kitchen, a neat Shop on the corner of the lot, a large Garden, &c.

The terms will be moderate, and made known by applying to F. X Martin, Newbern, Joseph Ross, Raleigh, or the Subscribers in Halifax. Payments will be made convenient to the Purchaser. If not sold before the first of January, it will be rented for one or more year or years.

Andrew Fleming & Co.
Halifax, Nov. 18.

RIDING CHAIRS, &c.

THE Subscriber, living in Raleigh one quarter of a mile from the Market-house on Harget-street, respectfully informs the Citizens of Raleigh and its Vicinity, that he has lately commenced the Riding and Windsor Chair making Business, and is now ready to undertake any thing in that line. He trusts from his particular attention to, and faithful performance of what he undertakes, to merit public Patronage.

WESLEY WHITAKER,
Dec. 20, 1805.

JUDGE POTTER's CHARGE.

Concluded from our last.

I think the convention did not intend all this—I think their words will not warrant such an exposition. And if they neither expressed it nor intended to express it, there is no ground even for implication. But the true construction of the 25th section of the Bill of Rights I take to be this: The word *being*, in the first clause, is equivalent to the word *is*; and to substitute the latter, the clause would read thus: "The property of the soil in a free government, is one of the essential rights of the collective body of the people." By the use of the participle *being*, the existence of this right is taken for granted, as a thing self-evident in the new government. And, in a declaration of rights, if enough can be collected from the *words*, to ascertain that the makers of the instrument considered the people possessed of a right, it is the same as though they had declared it in express terms.

What is this right? I call it the right of *domain*. And that right which is vested in the people by a subsequent part of the section, to be held in sovereignty, I call the *empire*. "The domain (says Vattel) is that right in virtue of which the Nation *alone* may use the country for the supply of its necessities, and may dispose of it in such a manner, and derive from it such advantages, as it thinks proper. The empire, is the right of sovereign command, by which the Nation ordains and regulates at its pleasure, every thing that passes in a country. If many free families (says he) spread over an independent country, come to unite, in order to form a Nation or State, they all together possess the empire over the whole country they inhabit. For they already possess, each for himself, the domain, &c."—In another place, he says, "the right which belonged to the society or to the sovereign, of disposing in case of necessity, and for the public safety, of all the wealth contained in the State, is called the *eminent domain*."—Again he says, "the domain of the nation extends to every thing it possesses by a just title; it comprehends its ancient and original possessions, and all its acquisitions made by means just in themselves, or received as such by nations; concessions, purchases, conquests made in a war carried on in form, &c. And by its possessions we ought not only to understand its lands, but all the rights it enjoys. The general domain of the nation over the lands it inhabits, is naturally connected with the empire. The *useful domain*, or the domain reduced to the rights that may belong to a particular person in the State, may be separated from the empire." Thus we see, that by *empire* and *sovereignty* is meant *authority*, *jurisdiction* and *command*. That by *domain*, we are to understand, the possession of wealth and the enjoyment thereof. And that *domain*, in its usual sense, is susceptible of a division—*eminent domain*, being the right of disposing of all the wealth contained in the State, &c. is naturally connected with the empire: And *useful domain*, being that which is reduced to the rights that may belong to a particular person in the State, is capable of a separation from the empire.

After vesting the domain of the soil or wealth of the State in the collective body of the people, to the *necessary* exclusion of all others, the convention goes on to fix the boundaries of the State, within which that right should be held and enjoyed But having vested the *domain* of the soil, something more was necessary; therefore, they say, "all the territories, seas, waters and harbours, with their appurtenances, lying, &c. are the right and property of the people of this State, to be held by them in sovereignty." This clause not only adds to the domain already vested, all the seas, waters and harbours, but it also vests the *sovereign command* of the State in the people. It appears to me, that the convention (besides ascertaining the limits of the State) had three objects in view—one was to secure to the people the absolute sovereignty of the State, another was, to guard against all usurpation of individuals, and to compel them to hold their lands of the State; and the third was, to exclude all but the members of that collective body from holding or enjoying the property of the soil. The latter object is perceived in the expression of the first clause; and I think the convention must have had their eye upon the subject of alienage, a subject familiar to them, and, next to sovereignty, one of the most important in a free state. I am the more convinced of this, when I consider the last saving clause in the section. To what end, I would ask, could they introduce that clause, were it not to let in a certain description of aliens and foreigners who were excluded in the foregoing part of the section? The very exception proves their exclusion, and shews the sense in which the convention intended to be understood by *the property of the soil*.

Next follows the first proviso, in these words: "Provided always, that this declaration of right shall not prejudge any nation or nations of Indians from enjoying such hunting grounds as may have been, or hereafter shall be secured to them by any former or future legislature of this State." This proviso was thought necessary, because the Indians were not considered as of the collective body of the people, and were therefore excluded from enjoying any privileges touching the soil, by the first clause in the section, as were all aliens. The second proviso is in these words: "And provided also, that it shall not be construed so as to prevent the establishment of one or more governments westward of this State, by consent of the legislature." This proviso was thought necessary, because as the limits of the State were fixed by a convention, for that and other *extraordinary* purposes, no future legislature, convened for *ordinary* purposes, would possess the power of diminishing the bounds or altering the demarkation, by erecting a new State; and they saw that ere long such a thing would probably take place: The extent of territory was very great, and a natural barrier dividing, as it were, the western from the eastern part of the State, would always obstruct that mutual access and free intercourse, so necessary in the same government, and within the jurisdiction of the same legislative body. The third and last proviso is in these words, "And provided further, that nothing herein contained shall affect the titles or possessions of individuals holding or claiming under the laws heretofore in force, or grants heretofore made by the late King George the third, or his predecessors, or the late Lords Proprietors, or any of them." Here the convention speaks of individual rights, as contradistinguished from sovereign power. And whence the necessity for saving *individual* rights, if it was intended, in the body of the section, to destroy *public* rights only? The convention, in fact, supposed they had destroyed all rights, whether public or private, except those of the people who composed the collective body of their own State. But, thinking that justice, policy, and the faith and dignity of the State demanded the protection of all individual and strictly private rights which had been lawfully acquired, this proviso was deemed necessary.

To make the common cause, in which the State was then warmly engaged, as popular as possible, was the first care of our infant cabinet; to that end, every measure was pursued which tended to fix the wavering, to reform the disaffected, and to bring over as many as possible to our standard. Pursuing this policy, and seeing that a general destruction of individual rights would only serve to irritate an already relentless foe, and add strength to his arms, the convention thought it expedient to except all individual private rights lawfully acquired. But, in doing this, I cannot suppose they intended to save such a right as the plaintiff's.

For the better understanding of this proviso, let us divide it into three branches. 1st. It preserves the rights of individuals, holding or claiming under the laws heretofore in force. The meaning of this branch is, that all the lands which had been appropriated by individuals should remain so, and not be made the subject of entry by the new Government; and all titles of individuals, sanctioned in any manner or degree by former laws, whether by pre-emption, the act of limitations, or otherwise, should remain totally unaffected, in the same manner as though no such bill of rights had been declared. 2dly. It preserves the rights of individuals, holding or claiming under grants heretofore made by the late King George III, or his predecessors. The sense of this branch appears to be this—that these titles should take their course, and be held as valid as they were before the declaration, notwithstanding the persons under whom these individuals held or claimed had lost all sovereignty and territorial rights. 3dly. It preserves the rights of individuals, holding or claiming under the late Lords Proprietors, or any of them. This branch was added for the same reason that the second was, considering the Lords Proprietors possessed of prerogative power and privileges; and it shews too, that if Lord Granville's right had been preserved, those holding by grant under him would have been protected by the provisions or the second branch. As to him, therefore, this branch would, in that case, have been useless. And as the expression goes to the Lords Proprietors, or *any of them*, as by far the greatest number of grants were issued by the Earl Granville, and as he was, notwithstanding his relinquishment to King George II, called and understood to be a Lord Proprietor, and did in fact possess, not only the right of subinfeudation and of escheat, but many prerogatives and extraordinary privileges, and had regularly kept up his office for granting out the lands in his district, with the reservation of quit rents, I cannot believe that he was intended to be left out of the list of Lords Proprietors. I infer, therefore, that he was not intended as one of those individuals mentioned in the last proviso. This construction, as I conceive, gives meaning and consistency to every part of the section; and a true exposition never permits any part of a statute to be silent, if it can be made to speak.

Again, there are several rules applicable to this section which tend to confirm the construction I have put upon it. It is a rule of construction, that a statute which is made for the good of the public, ought, although it be penal, to receive an equitable construction; and if the words are obscure, they shall, for the same reason, be expounded most strongly for the public good. In some cases, the letter of an act is restrained by an equitable construction; in others it is enlarged; and in others, the construction is contrary to the letter—it is said to be within the meaning, because it is within the mischief. And in order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose the law-maker present, and that you have asked him this question, Did you intend to comprehend this case? Then you must give yourself such an answer as you imagine he, being an upright and reasonable man, would have done.

I would not be understood to express a desire (as I feel none) to strain the rules of construction; because such a desire would be intemperate, and the expression of it highly improper; and because I think the present case needs no such subterfuge. On this account, I do not set up the equity of this section against the letter; but if they concur, the equity very much aids the letter. Now if the question had been put, according to the rule of construction just mentioned, I do believe that every member of the convention would have said, they intended to destroy the right of this plaintiff. I think so, because it was reasonable and highly proper in itself, and because such has been the general understanding in this State ever since the declaration of rights.

Another rule is, that if a statute be penned in dubious terms, usage is a just rule to construe by; for *jus et norma loquendi* is governed by usage, and the meaning of words, spoken or written, ought to be allowed as it has constantly been taken to be. As far as there has been any usage in this case, it has favoured the construction I have given. These lands have been granted by the State; therefore, the legislature thought the plaintiff's right divested. Many recoveries have been had in Ejectment, upon the evidence of such titles, and no defendant ever thought proper to question the validity of such grants; and the Courts, instead of calling the plaintiff, if he had not made out a title in himself against the whole world, have suffered these recoveries to be had. This is evidence that the courts and lawyers of this State did not believe that such defence was tenable.

Another rule is this. Great regard ought, in construing a statute, to be paid to the construction which the Sages of Law who lived about the time, or soon after it was made, put upon it—because they were the best able to judge of the intention of the makers; and it is a maxim that *contemporanea expositio est fortissima in lege*.

Though there was no exposition given of this bill of rights, soon after it was made, by the courts of this State, yet we know that some of the Sages of Law who lived at that time, are yet living, and that they entertain the opinion that the plaintiff's right was vested in the State by the bill of rights. Some regard, too, should be paid to the opinions of the legislatures upon this subject—particularly as they were composed of the same men, in part, who declared the bill of rights. The legislature, very soon after the constitution was formed, opened offices for receiving entries of claims for lands, and declared, that any citizen might enter with the entry-taker of any county within the State (as well within the Earl Granville's district as elsewhere) a claim for any lands lying in such county, which had not been granted by the Crown of Great-Britain, or the Lords Proprietors of Carolina, or any of them, in fee, before the 4th day of July, 1776, or which had accrued, or should accrue to this State, by treaty or conquest; and that every person or persons, and his or their heirs and assigns, who in the office of the late Earl Granville, or in the late public land office, had heretofore made any entry or entries, or who, since the death of the said