

VOL. XXXIX.

OSTIPE GALDS & SON? EDITORS AND PROPRIETORS.

TERMS.

Supscription, three dollars per annum-one half in advance.

Gr Persons residing without the State will be required to pay the whole amount of the year's subscription in advance.

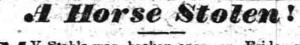
RATES OF ADVERTISING. one dollar; each subsequent insertion, 25 cents. Court Orders and Indicial Advertisements will he charged 25 per cent, higher; and a deduction of 33} per cent. will be made from the regular prices, for advertisers by the year.

CT LETTERS to the Editors must be post-paid.

NOTICE!

DERSONS indebted to the late Firm of W. A. WILLIAMS & Co, are required to make immediate payment, or their bills will be put in a train for collection. Their office is at the corner of Mrs. Sherwood Haywood's Lot. ROBT. W. HAYWOOD,

Trustee. Releigh, Feb. 19, 1838. 16 Sw



W Stable was broken open on Friday night from ; for the recovery of which, or such information as will lead to it, I will give a reasonable reward. The said Horse is a light Iron Grey, five feet two or three inches high, is rough-shod all round, and blind of his right eye.

WILLIAM HOLMES. Raleigh, Feb. 19, 1839.

OLD, SIR ARCHY.



THIS FINE BRED RACE HORSE TILL serve throughout the year at his For every 16 lines (this size type) first insertion the Season, with Fifty Cents to the Groom .-The Spring Season will begin on the 1st of March and end the 1st of August.

equal) they are not excelled by the get of any Horse in America.

will continue the liberal patronage he has already received. Extensive and suitable prepara-

last, and a valuable HORSE stolen there. he by imported Featnaught-Young Tup by im-

be had on reasonable terms. Her dam was bred by Turf, viz: 5th in immediate descent, in two Mr. Axis, of Northampton, several of whose full col'a'eral lines, from the great English Eclipse,

MONDAY, MARCH 5, 1838.

OPINION Of the Supreme Court of North Carolina, in the case of the " RALEIGH & GASTON

FESTIVAL has now the produce of three near Gaston, on the Roanoke River." Af- and there prosecuted by the Company, but untenable. It is true the eminent domain Springs on foot, widely spread through the ter providing for the organization of the objected to the same-First, as a violation of is a political and sovereign power ; so is Southern and Western States, [those of the first Company, with the usual faculties of plead- the right of private property secured by the every other power vested in, or exercised Spring being mestly in Virginia. Jand in promi- ing and being impleaded, and purchasing 12th section of the Bill of Rights ; and, se- by any Government. Before a people in-

tions are made to board mares at 25 cents per ing a Rail Road, to be located as aforesaid. At the next Term, three of them returned the existence of Government and to the dis- the Supreme Court of the United States, in day, with no hability for escapes or accidents. and to make and construct all such works their report in the form prescribed in the charge of those functions for which the Barrow vs. the Mayor of Baltimore, (7

his dam by Timoteon, Grand dam by Young 12th section, the Company have immedi- ed the oath to them. Tup, G G, dam by Umpire, G. G. G. dam by ately " full power to enter upon all lands The Company thereupon moved to con- to act on and control the people themselves, sation, and the nature of our free institu-Grey Diomed, G. G. G. G. G. dam by Wild Air. through which they may wish to construct firm the Report and have it entered of re- unless in those points, in which the Govern- tions, were also relied on as sufficient in ported Top, he by Javein, and he by English the Road, to tay out the same,"not invading cord; but the other party opposed the ment is restricted by limitations of power. themselves to create the supposed restriction Eclipse-Young Tup's dam by Marske, he by dwelling houses, &c. and with other restric- motion, and prayed the Court to dismiss With that exception, the powers of the on this power. But the sense of right and imparted Shark out of imported Virago-Um. tions, particularly mentioned. And by the the proceedings. Upon consideration there- nation become those of the Government, wrong varies so much in different individupire by imported Shark, out of a Cub Mare. 17th & 21st sections, entry may be made of, the County Court refused the motion save only, that over the Constitution, of als, and the principles of what is called

readily perceive, that better materials cannot, necessary materials, with a provision in the that no appeal is given in the Charter. at this day, be furnished for a choice stock, than 22d section for redress by action and dou-BY APPLICATION to the Postmaster at Hills-borough, a very fine bay FILLY, by Loxe's in the veins of this beautiful Animal. In a condensed view, he stands thus related to jury to the land, crops, or other property, der of the County Court, dismissing the States, have specially delegated to it parby an entry for either of those purposes.

sisters commanded high prices; one sold for \$1600. viz: through the dam of Pimo'eon by Saltram- land thus laid off for the Road, or entered ordered, commanding the County Court ment, for particular purposes only. But This Filly is of a good size, is very handsome, he by Eclipse through the grand dam of Ameri-upon, after having been thus laid off, and to proceed further in the case according to these incidental powers, derived by a fair,

the assessment, according to the act. Mr. sent of individuals.

the Company moved the Court of that | therefore, the public must have the right | Counsel for the Appellant, therefore, to es. County to appoint five freeholders to make to make them without, or against, the con-

Davis appeared and made known to the This, too, is not only a right of the na-RAILROAD COMPANY v. DAVIS," delivered Court, that he and the Company had been tion, constituted by the aggregate body of unable to agree touching the price to be the people, but it is a right and power of The Plaintiffs were incorporated by an paid to him for the land sought to be con- Government. It was said at the Bar, that owner's Stable in Johnston County, five act of the General Assembly passed in De- demned, or touching the compensation for it was a sovereign right and therefore remiles West of Smithfield, 25 miles South-East cember, 1835 (2 Rev. Code 299) . for the the inconveniences he must be subjected to mains with the people of this State, since of Raleign, and 40 miles North-East of Fayette- purpose of effecting a communication by a by the proposed location of the Road. And it is not granted in the Constitution. The ville, at the moderate price of THIRTY dollars Rail Road from some point, in or near the he refused his assent to the mode of pro- position, if true, would destroy the value City of Raleigh, to the termination of the ceeding for settling the controversy touch- of the power here and dissolve the Govern-Greensville and Roanoke Rail Road at or ing the said price and compensation then ment. But it seems to the Court, wholly and holding estates real and personal, as condly, as depriving him of the right to a stitute a Government, they are themselves far as may be necessary for the purposes of trial by Jury, which is made inviolable by necessarily the possessors of all political Such ev dences, in a ldition to his blood, turf the act, it proceeds in the seventh section the 14th section of the same instrument. - power which men, by the natural and diperformances, from one to four mile heats, [see .. to invest the President and Directors The Court, nevertheless, appointed the vine law, can rightfully exercise over each stood to be a limitation of the power of the Turf Register] and moderate terms, it is hoped, with all the rights and powers necessary freeholders, and made the order specifying other. But by the constitution of gov- Federal Government, and not of that of the for the construction, repair, and maintain- their duties in the words of the Statute. ernment, the political powers requisite to States. It was so authoritatively held by as may be necessary and expedient to the 14th section, together with the certificate community created it, are transferred by Peters' Rep. 243) which dispenses with FESTIVAL was sired by American Eclipse- proper completion of the Road.". By the of the Justice of the Peace who administer- the people to the Government. From the

Thus his blood might be extended almost in- upon the lands thus laid off for the purpose of the Company, and granted that of Mr. Government itself, to abolish or alter it. natural justice are so uncertain, that they definitely, as every body knows that ancestors of constructing the Road, and upon adja- Davis, from which an appeal was prayed. The Government of the United States is cannot be referred to as any sure standard of Those conversant in the annals of blood, will cent lands for the purpose of getting the which was also refused, upon the ground an exception to the general principle, from Constitutional power. It is to the Constiits peculiar construction. To its forma- tution itself we must look, and then, not The case was then brought into the Su- tion the people of the several States were merely to its supposed general complexion. proceedings, was held to be erroneous and ticular powers for the purpose of making subject matter and to direct consequences, To provide for the condemnation of the reversed with costs, and a writ of procedendo themselves one people, under one Govern- are incompatible with the enactments of the

tablish both parts of the proposition.

NO. 18

The right to compensation as an absolute and legal right, was contested, by the Counsel for the Appellee, and strenuously asserted on the other side. The Court do not decide it, but in this case will assume it to exist as contended on the part of the Appellant, tho not on all the grounds on which his Counsel placed it. The Court cannot adopt some of the several distinct sources from which it was derived.

One of them was the fifth amendment of the Constitution of the United States, providing that "no person shall be deprived of his life, liberty or property, without due process of law, nor shall private property be taken for public use without just comfurther observations from this Court.

There must be words in it, which, upon a Legislature, before a Court can pronounce such enactments null. The principle is however so salutary to the citizen, and concerns so nearly the character of the State, that it may well be urged that it must be consecrated by its adoption in some part of the free Constitution of this State. We should be reluctant to pronounce judicially, our inability to find it in that instrument. If it be not incorporated therein, the omission must be attributed to the belief of the founders of the Government, that the Legislature would never perpetrate so flagrant an act of gross oppression, or that it would not be tolerated by the people, but be redressed by the next Representatives chosen. There is no doubt. that, while the Legislature and people of this State expressly restrict the action of their own local government was mindow ner restrained or would never act in a manner to make such a restraint necessary .---There is, however, no clause in that instrument which seems to bear on the point, unless it be that which is relied on in the argument for the Appellant. It is the 12th section of the Bill of Rights which declares, "that no freeman shall be disseised of his freehold, or deprived of his life, liberty or property, but by the law of the land." Under the guaranty of this article, it has been held, and in our opinion properly held, that private property is protected from the arbitrary power of transferring it from one person to another. We doubt not that it is also protected from the power of despotic resumption, upon a legislative declaration of forfeiture, or merely to deprive the owner of it, or to enrich the treasury, unless as a pecuniary contribution by way of tax. Such acts have no foundation in any of the reasons on which depends the power, in virtue of the right of eminent domain, to take private property for the public use, and they could not be sustained by the offer of the fullest compensation. Though not so obvious, it may also be true that the clause under consideration is restrictive of the right of the public to the use of private property impliedly, and forbids it, without compensation. But it is a point on which the Court is not disposed nor at liberty to give a positive opinion on this occasion. It is not required as a preventive warning against unjust legislation. For it is more inadmissible to suppose that the legislative acts will be designed to work oppression and wrong, than to violate the Constitution directly. In is not deemed probable, and with difficulty conceived to be possible, that the Legislature will at any time take the property of the citizen for public use, without at the same time providing some reasonable me-

For her Pedigree, reference is made to J. D. And only one remove further, from the same AMIS, Esq. or Major A. J. DAVIE. 16-t lst Ap. Hillsboro', Feb. 18, 1838.

FRESH GARDEN SEEDS. WILLIAMS& HAYWOOD havelately received a supply of THORBURN'S superior Garden Seeds, all the growth of 1837. Raleigh, Feb. 1838. 17-4t

NOTICE.

N Monday, the 2d day of April ensuing, I U shall self to the highest bidder for ready money, at the Court house in Baleigh, a likely NEGRO BOY about 19 years of age, belonging to the Estate of EDMUND COOPER, sold under the direction of the Will.

ALSO, on the same day and at the same place, I shall sell on the same terms, a Megro Woman and Child, about 22 years of age.

ALLEN ROGERS, Bx'r. 17-18. Wake co., Feb. 20, 1838.

Administrator's Notice.

THE Subscriber, having qualified at Februa, ry Term of Wake County Court, as Administrator on the Estate of Francis Sturdevant, dec'd. of said county, hereby gives notice to all persons indebted to said Estate to make immediate payment, and to those having demands, to present them within the period prescribed by law, otherwise, this notice will be plead in bar of their recovery.

HENRY STURDEVANT, Admr. Feb. 19, 1838. 17 6w.

FURTHER NOTICE.



AT the Store of Johnston Bushee, Esq , on the 17th of March next, I will expose at public sale to the highest bidder, on the usual credit

SIX LIKELY NEGROES, the property of the said Francis Sturdevant, dec'd. HENRY STURDEVANT, Admr. 17-ts. Frb. 19, 1838.



damages were assessed shall be vested in property, in its highest sense, existing in and nature of the Roads, and restricted as to the Company in the same manner as if the the community or sovereignty of the State the mode of exercising it by the provisions MILE exercises of the above institution were it always has been, to give to the Pupils an unproprietor had sold and conveyed it to before any division among individuals, and in the Constitution, if any such there be .derstanding knowledge of what they are taught resumed on monday the 15th inst. under they deem the right of resumption for com- It is contended that there are such provisithe immediate management and direction of -to proportion their studies to their respective them." Miss HARRIET A. DELLAT, who was recommencapacities-to establish a habit of close and By other parts of the act, the Company mon use to be tacitly reserved by implied ons, and that the act before us is in violation ded to the Trustees by Mrs. Emma Willard, of correct thinking-to illustrate, as far as may be, is required, under pain of forfeiture, to be- agreement. Thus derived, the power bas of them in several respects. the di-tinguished Female Seminary at Troy, N. each lesson by example and experiment, and Y. Miss Dellay hus been connected with the to give to the whole system of instruction a gin the work within two, and finish it with- the sauction of compact, which proba-It is said-First, that the right of properin ten years, and is vested with the ex- bly furnishes the motive for tracing it to this Northampton Academy for the last 12 months, practical, rather than a theoretical cast. No ty involves the right to precedent compenand her extensive and thorough knowledge of clusive right of transportation on the Road, source as constituting a sanction founded pains shall be spared to give to the Institution. sation for it, when taken for public uses. thod of ascertaining a just compensation and the various sciences belonging to a perfect fe- a character for conscientious, unsparing devotion and required to transport all persons and in morals and nature. But, practically, It is thence deduced as a corrollary, that some certain means of paying it. Moreover, male education, her admirable method of imto the best interests of its Pupils. it is immaterial whether the right be supproperty for certain tolls. parting instruction, her untiting industry in the Lessons in Music and Painting are given by the questions whether the property shall be it is not open to the Court to give the defin-It is a misdemeanor, punishable by fine posed to have been impliedly reserved beperformance of the duties appertaining to her a competent and approved Instructress. The taken, and what compensation shall be paid itive opinion demanded, because it does not station, and her mild and amiable demeanor. FRENCE LANGOAGE will be taught by a native and imprisonment, to destroy or injure the cause it ought not to be granted, or because for it, do constitute a question at law res- in our judgment necessarily arise here, and have already secured for her the universal ap- of France, a gentleman every wa it is a portion of the national sovereignty Road or place any obstruction on it. pecting property, and must be tried by a it is indecent to decide so grave a question probation of not only the patrons of the institu-The Subscriber will cheerfully take charge By section 25, all machines and vehicles which is inalienable by the government, or Jury, according to the 14th section of the extra-judicially. Here the Statute does give tion, but of the Trustees and of all who are ac- of such Pupils as may be committed to his perquainted with her both as a lady and a teacher. sonal care; and will place them in such families and " all the works of the said Company whether the right is created by the public Bill of Rights. compensation fair and liberal, embraving not The Musical Department is entrusted to a la- as will secure attention to their comfort and constructed, or property acquired under necessity, which at the time calls for its only the direct, but all incidental and con-If the Government can lawfully take pridy admirably qualified to give instruction in moral culture. A few boarders will be received the authority of the act, and all profits exercise-its existence in every State is vate property for public use, without com- sequential damages. For the purposes of which shall accrue from the same, shall be incontestible and indispensable. A familiar instance of the exercise of the pensation, then, confessedly, there is no power is the levying of revenue, by taking controversy to be tried. But the Governing granted, that compensation is in all cases on early application, into his own family. that branch. Students will be charged only from the time TERMS OF TUITION. vested in the respective Stockholders of the of entrance to the termination of the session. from the citizen, from time to time, such ment may prescribe such terms as may be requisite, as no doubt it will in all cases be Board may be had in respectable families in Literary Branches-First Class, \$17 00 per set Company forever, in proportion to their deemed personal estate, and be exempt from any public charge or tax for fifteen years." By the nation. Another instance essential-2d & 5d do 15 00 respective shares ; and the same shall be the village, at \$74 to \$8 per month. 4th do 12 50 Inst'n on either Piano of Guitar, 25 00 Drawing and Painting, 10 00 Ormanental Needle Work (Muslin) 3 00 The terms of instruction for the session of five months, are as follows : For the ordinary branches of English By the last section, "the corporate pow- ly of the same character, is that of devot- Government to make compensation, yet if taining it and the period of payment, is not - \$10 Crewel 500 ers granted by the act are to enure for nine- ing private property to public use as a the compensation need not precede the takdo - 12 French Language, 15 00 " French and Mathematics, -- 15 Unless the compensation must precede ty years and no longer, unless renewed by highway. A nation could not exist with- ing of the property, the condemnation of the " Music, MATT. CALVERT, Sec'y. B. T. Board may be obtained in respectable fami-15 out these powers, and they involve also Defendant's land is not illegal, because he the seizure of the property, it is true that in lies at 9 or 10 dollars per month. The present competent authority." The Road, as laid down, passes over the line welfare of each citizen individually. and of Mr. Davis, situate in Warren An associated people cannot be conceived, certaining and enforcing payment of its va-county, and, at November Term, 1836, without avenues of intercommunication, and Jackson, Jan. 29, 1838. Session commenced on the 25th ult. 17-4w. The Richmond Whig and Raleigh Register, WM. M. GREEN, Sup. will copy the above four weeks, and forward Hillsboro', Feb. 1838. 17-4w their accounts to Star and Standard, each 4 weeks. M.C.

ansestor in another line, viz: through Javelin, stream is still more impulsed by the rich and choice Medley Strains, coursing from the pure fountain of Grey Diomed, by imported Medley,

> and Amanda the dam of Duroc. Who could desire better materials ? Bona Vista, Johnston Co., N. C. {16-4w

Look out for a Scoundrel!

TEELING it a duty which I owe to the Public, to expose rascality and put them on their guard against imposition, I proceed to give a snort sketch of a certain

who left Nash county, N. C. a short time since, between two days, after having forged a Note to the Tarboro' Branch of the Bank of the State, for \$1,400 or \$1,600-using the names of sevral of the most responsible men of his county; besides numerous breaches of trust committed that presented itself for defrauding the com-

munity. WHITFIELD is a fine figure of a man; about five leet ten inches high; rather dark hair; plausible in his manners, and of insinuating adand prone to ingratiate himself into the favor of strangers. It is supposed he will make his way to Texas; and knowing that the people of that country are liable to be imposed on by such scoundrels, and having the best wishes for the prosperity of that country, 1 feel it to be my duty to warn them against this fellow, who will attempt to take them in as certainly as he goes Rail Road Company, and they shall be ad- we think, be universally acknowledged .-PETER R. LILLY. among them.

Raleigh, Feb. 24, 1838. 17-3w The New Orleans Picayune and Houston (Texas) Telegraph will insert the above three weeks each, and forward bills to me. P. R. L.

THULSBOROUGE FEMALE SEMINARY.

TILE Subscriber takes this method of giving notice to Parents and Guardians, that he has again taken this Institution under his immediate instruction and contro'. Instead of the mere general Superintendence which he has exercised for some years past, he will henceforth lake part in the instruction of the higher Classes, as well as give to every department of the School a constant, personal Supervision --The same Teachers who have, in time past, given such general satisfaction to the Public, will continue their faithful labors.

The first principle of the School shall be, as

also to provide for a compensation to the the said act of the General Assembly and proximate and natural implication from owner of the land, is the subject of nine the law of the land. From that judgment, those enumerated, or from the purposes Tup and Young Tup. Then fall in the two sections of the act-beginning with the 12th Mr. Davis appealed to this Court. powerful currents from the loins of old import- and ending with the 20th section. The As no objection was made in either of its face, have been exercised and must be

the land cannot agree as to the terms of ferent form than the charter author- gated powers: It is only one of limited purchase, the former is authorized, after izes ; or that the freeholders acted irregu- and restricted power.

Court is thereupon required to "appoint the fee simple of the land taken and all hearing such evidence as either party may the America

and entered of record ; whereupon, and cation afforded the opportunity. upon payment or tender of the damages," The right of the public to private properthe land reviewed and assessed as afore- ty, to the extent that the use of it is need

judged to hold the same in fee simple, in Writers upon the laws of nature and nasold and conveyed it to them. "If the There may, indeed, be abuses of the power, Company shall take possession of any land, either in taking property without a just

notice to the owner, to apply to the Court larly; or that the damages assessed are

try the same" in a form given in the act ; benefit of a full argument at the last term. ficers. It does not even confer the revenue and in making the assessment, " they shall The impressions received were then so deconsider the proprietor of the land as the cided, as to have warranted the delivery owner of the whole fee simple interest of our judgment immediately, if it had been both powers, by levying taxes and by autherein, and take into consideration the necessary; but as the prosecution of the quality & quantity of the land condemned, work conducted by this company could not in various ways, be never losing an opportunity the additional fencing that will be required be impeded by the delay, and some of the thereby, and all the inconveniences that points made are novel and of much magniwill result to the proprietor from the con- tude, in reference to a class of subjects on demnation thereof." The Report of the which there has been recently and probafreeholders, when thus made, is to be re- bly will be copious legislation, it seemed dress; quite a business man in every respect, turned by them forthwith to the Court and discreet, before aunouncing a decision, to " unless some good cause be shewn against give to the argument, and to the whole the report it shall be confirmed by the Court subject, the deliberation for which the va-

> said shall be vested in the Raleigh & Gaston ful and advantageous to the public, must, the same manner as if the proprietor had tions treat it as a right inherent in society. and fail for forty days to institute procee- equivalent, or in taking it for a purpose dings for its condemnation as aforesaid, or really not needful or beneficial to the comshall not prosecute them with diligence, munity; but when the use is in truth a the proprietor of the land may apply to the public one, when it is of a nature calculat-Court to appoint the freeholders with the ed to promote the general welfare, or is before, and the Court shall in like manner the public is. in fact, to have the enjoy-

of forming the Constitution as disclosed on ed Shark, half brother to English Eclipse, thro' material provisions of those parts of the act the Courts below, that the road was laid yielded. The Government of North Caro-Umpire, and the dam of Young Tup. But the are, that if the Company and the owner of out so as to cover more land or in a dif- lina, however, is not one of specially dele-

> The Constitution begins by simply "esof Pleas and Quarter Sessions, and the not a fair and adequate compensation for tablishing a government for this State," and vests "the Legislative power in a Sefive disinterested and impartial freeholders, incidental damages, it must be assumed, nate and House of Commons." There are to assess the damages to the owner from that there is no ground for exception in no grants of power to the Legislature exthe condemnation of the land for the pur- either of those respects. The case is there- cept in a few instances, where the power pose aforesaid, any three of whom, after fore to be decided, on the specific Con- would not seem naturally to arrange itself being sworn and viewing the premises and stitutional objections made on the part of under the general class of legislative pow-

power, nor that of granting the vacant lands; vet the Legislature has always exercised thorising dispositions of the public domain. Although "the right to the unappropriated soil is declared to be, in a free Government, one of the essential rights of the collective body of the people," which means nothing more than that it shall not be seized on by any individual or particular class, but shall be kept or disposed of, for the common benefit of the whole people-this power, or right of eminent domain, is likewise possessed by the Government, and may be exercised by the Legislature or under its authority. Unless vested there, it cannot be called into action, and without it neither the Government nor the State could hold together. It is peculiarly fit to be wielded by the Legislature-it is a power founded on necessity. But it is a necessity that varies in urgency with a population and production increasing and diminishing, and demanding channels of communication, more or less numerous and improved, and therefore to be exercised according to circumstansame duties and powers in all respects as necessary to the common convenience, and ces from time to time. The Legislature of North Carolina, when it was a Province affirm or disaffirm the report :" and "when ment of the property or of an easement on and since it became a State, have always any such report, ascertaining the damages, it, it cannot be denied, that the power to exercised it, either directly or through the shall be confirmed, the Court shall render have things before appropriated to individu- intervention of the Courts that administer judgment in favor of the proprietor for the als again dedicated to the service of the the domestic police of the several counties. damages so assessed and double costs, and State, is a power useful and necessary to It is a power which the Government is when the damages and costs shall be satis- every body politic. Theoretical writers bound to the people to exercise, limited onfied, the title of the land for which such have derived it from the original and full ly by a sound discretion as to the number