The North Carolina Standard.

PUBLISHED WEEKLY, BY
WILLIAM W. HOLDEN,
EDITOR AND PROPRIETOR.

THE CONSTITUTION AND THE UNION OF THE STATES--THEY "MUST BE PRESERVED."

RALEIGH, N. C. WEDNESDAY, APRIL 9, 1845.

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TERMS.

THE NORTH CAROLINA STANDARD
IS PUBLISHED WEEKLY, AT
THREE DOLLARS PER ANNUM, *IN ADVANCE.*

Those persons who remit by Mail (postage paid) Five Dollars, will be entitled to a receipt for Six Dollars or two years' subscription to the Standard—one copy two years, or two copies one year.

For *four* copies,	$10 00
" *ten* "	20 00
" *twenty* "	35 00

The same rate for six months.

☞ Any person procuring and forwarding five subscribers with the cash ($15), will be entitled to the Standard one year *free of charge.*

ADVERTISEMENTS, not exceeding *fourteen* lines, will be inserted *one time* for One Dollar, and twenty-five cents for each subsequent insertion;—those of greate length, in proportion. *Court Orders* and *Judicial Advertisements* will be charged twenty-five per cent higher than the above rates. A deduction of 331-3 per cent. will be made to those who advertise by the year. ☞ If the number of insertions be not marked on them, they will be continued until ordered out.

Letters to the Editor must come *free of postage*, or they may not be attended to.

New York City Advertisements.

"Lamps to Burn Camphene."

HORN'S *PATENT SOLID BOTTOM GLASS FOUNTAIN LAMPS* for *Camphene* or Chemical Oil, have become universally celebrated and sought after, as the most perfect "*Lamps*" ever invented. They meet the approbation and praise of all who use them. Try all others, but do not fail to try the best, the cheapest, and above all, the *Lamps* that will give the greatest light with the least expense. They are the most simple and easy to manage and trim, cannot corode or become heated while burning, easily cleaned inside and out, and not affected by a draft or current of air. *Less than half a cent per hour will give you a splendid light!!!*
"*Try one.*" Manufactured wholesale and retail by J. O. Fay, No. 136 Fulton street, (Sun Buildings,) New York, viz: Stand Lamps for Parlors with or without Lustres; Suspending Lamps for Stores, Hotels and Churches; also Chandeliers, Side Branches, &c. &c., in any style desired, or made to order.

N. B. Ladies, if you wish to preserve your eyesight to a good old age, or want a strong and beautiful light to sew or read by, do not fail to procure one of these *Lamps.* One in the centre of a large parlor will enable you to read the finest print in the most remote corner.

March 19, 541-13t.

SPRING GOODS—1845.

HALLOCK, MOUNT & BILLINGS,
173 PEARL STREET, (One door above Pine Street,)
NEW YORK,

ARE now receiving by late arrivals from Europe, and from Home Manufacturers, a large assortment of *FANCY and STAPLE DRY GOODS*, adapted to the Spring Trade, which they offer by the piece or package, on favorable terms.

Their stock consists in part of—
Cloths, Cassimeres, Sattinets, Vestings,
American Prints of all styles,
Brown and Bleached Muslins, various styles and prices,
Irish Linens, Linen Lawns, Scotch Ginghams,
Printed Muslins and Lawns—new styles,
Balzorines, Alpacas, Lustres,
Silk and Cotton Work,
Silk and Cotton Velvets,
Fancy French and English Gambroons,
Spring Tweeds—single and double width,
Check Gingham and Merino Cassimere,
Drab D'Etes for summer wear,
American Pantaloon stuffs,
Brown Hollands, Silesias and Paper Cambrics,
Cotton Hosiery—bleached and brown,
Fancy and silk Handkerchiefs, Ribbons, sewing Silk and Twist,
Corded Skirts, Table Covers, Linen Thread,
Jaconats, Camorics, Gloves, &c. &c.

☞ Merchants buying goods for Cash will find it to their interest to buy of us.

March, 1845. 540-17t.

NEW SPRING GOODS.

RICHARDS, BASSETT & ABORN,
148 PEARL ST. NEW YORK,

Are receiving and offer for sale, at the *lowest market prices*, a very large stock of

Cloths, Cassimeres, Waistcoatings, and
FANCY DRY GOODS,
OF ENGLISH AND FRENCH MANUFACTURE,
Including giras and trimmings of every description, for
Outfitters and Merchant Tailors.

All those who resort to our market for their supplies will find it to their interest to visit our store and examine our stock.

New York, Feb. 4, 1845. 537-8t.

FRINGES, TRIMMINGS, &c.
D. A. BOOTH,
100 WILLIAM STREET, NEW YORK,
Importer and Manufacturer

OF FRINGES, for Dresses, Curtains, Carriages, Rugs, &c. Gimps, Dress Cord and Tassels, Zephyr Worsted, Canvass, &c. Coat Cords, Cloak Tassels, &c. All kinds of Bindings and Fancy Trimmings—A large assortment of White Cotton Fringes, &c. &c.

He invites attention to his assortment, which will be kept full during the season, as he will be receiving the newest and most fashionable styles.

Offered by the Package or otherwise.

Terms and prices shall be such as to give satisfaction.

☞ All kinds of trimmings made to order.

January 29, 1845. 534-13t.

IN TIME!

One Hogshead prime
MOLASSES.
If not very superior, return it.

A large lot of SPUN COTTON, made from new cotton and pure white—*numbers* NOT *altered.*

Also, several dozen ladies' dark assorted Kid Gloves, and black do., just from New York.

Terms. Six months credit for good paper, or 5 per cent. discount for the cash. T. H. SNOW.

March 25, 1845. 542-

Valuable Property for Sale.

By virtue of a Deed of Trust executed to me by Mr. Francis L. Walthall, for certain purposes therein mentioned, I shall proceed to sell on the 16th day of April, 1845, on the premises, the following Property to wit:

HIS HOUSE AND LOT, situated in the eastern suburbs of the City of Raleigh Also, TWO NEGROES—a girl, and a woman; together with all his Household and Kitchen Furniture. Among the Furniture are one splendid Mahogany Sofa, one Mahogany Centre Table, one splendid Piano Forte, besides two Clocks, two Walnut Tables, and two Bureaus.

The sale will be continued from day to day until all is sold.

Terms of Sale. House and Lot at six and twelve months, with interest from date. Other property, credit of sixty days for all sums of ten dollars and upwards. Cash for all sums under ten dollars.

Selling only as Trustee I shall convy to purchasers such title as may be vested in me, which is believed to be good.

Those persons indebted to Francis L. Walthall are hereby notified to come forward and make payments to me, as no other person is authorised to give a discharge; otherwise they will find their notes and accounts in the hands of an officer for collection.

Also, To hire, at the same time and place, a Negro man by the name of Allen, for the balance of the year.

W. WHITAKER, Jr. *Trustee.*

March 22, 1845. 542-4t.

☞ Blanks for sale at this Office. ☜

ST. MARY'S SCHOOL,
RALEIGH, N. C.

RT. REV. L. S. IVES, D. D. VISITER.
REV. ALDERT SMEDES, RECTOR.

The next Session of this School will commence on the 10th day of June, and continue ten months.

The Session will consist of two terms, of five months each, and payments will be required for each term in advance. The Summer term will end on the 10th day of Nov. The Winter term will commence Nov. 11th, and end April 15th. The experience of three years, has satisfied the Rector of the inexpediency of having two vacations in the year; he has chosen a time for the vacation, when body and mind being relaxed by the transition from Winter to spring, a release from the duties of the School is required both by teachers and pupils, when the traveling in any direction is safe and agreeable, and when the health of the country is, every where, good. Pupils must enter at the commencement of a term, and may be removed at the end of it. It is important that all should be present at the opening of the term when the classes are formed. No deduction therefore, will be made for delay in entering unless in the case of a new scholar, or of detention from sickness.

The expenses of the School are:

For Board, and English Tuition, per term of five months.	$100 00
Tuition in French,	12 50
" in Music, on the Piano or Guitar	25 00
with $3 00 for the use of Piano,	
" on the Harp,	30 00
with $10 for the use of the instrument.	
Tution in Drawing and Painting,	15 00
Pens and Ink,	75
Board, &c during vacation,	10 00

N. B. Beds and bedsteads are furnished by the School; pupils are required to furnish their own bedding and towels, The clothing of pupils should be distinctly marked with the owner's name *in full.* Mrs. Smedes will superintend any purchases parents may authorize their children to make in the City, but no account will be opened at any Store without the express sanction of parents or guardians. The religious services of Sundays being held in the Chapel of the Institution by the Rector, pupils have rarely occasion to visit the City, and the plainest attire is all that they require. Extravagance in dress is opposed to the principles and practice of the School, and parents, who entrust the care of their children's wardrobe *entirely to the discretion* of the Rector and his assistants, will never have occasion to complain on this subject.

Pupils are allowed to accept invitations in the City, for the day, only once a month; and never for the evening. They have opportunites of seeing their friends at the Soirees, which are statedly held during the Session.

The pocket money of Pupils must be placed in the hands of the Rector. In making purchases for their children, parents will have respect to the following regulations: The ordinary dress of Pupils, in Winter, will consist of such articles of Merino, Mouslin de Laine, Calico, or Gingham, of dark colors, as they may have in their possession.

The dress of the school, to be used on Sundays and other special occasions, must be of Merino, or Mouslin de Laine, of a dark blue color, made without trimming. The dress for the Soirees must be of plain white cambric, with no other ornament than a blue or pink ribbon. Bonnets must be of straw, with a dark blue ribbon, in Winter, and in Summer, with a ribbon of lighter color.

The ordinary dress for Summer, must be of Calico or Gingham; the dress for Sunday, of plain white Cambric. Lace in any form, Artificial flowers, and Jewellery of any description, are entirely forbidden.

Raleigh, April 1, 1845. 543-1t.

A LARGE STOCK OF
Superior Family Groceries,

JUST received, and for sale, at low prices, by the Subscriber; such as SUGARS, of all qualities Santa Cruz, Porto Rico, and New Orleans. COFFEE—Java, Laguira, and Rio. Pepper—grain and ground. Spice and Ginger, Teas, Molasses, Rice, Flour and Salt; Bacon and Lard; all of which will be sold low for Cash.

Also, in the Grocery line—Candles, Soaps, Indigo, Starch, Shot, of all sizes, Powder, Caps, Nails of all sizes and a very large lot, which shall be sold as low as any house in Raleigh will sell them. A large lot of Iron, of all sizes; Trace Chains, Castings, Pots, Ovens, Spiders, Skillets, Tea Kettles, Curry Combs, Spades, Shovels and Forks; a large lot of Sole Leather; Frying Pans, all sizes; White Lead, and many other articles.

Dry Goods. Calicoes, of the latest styles and of all colors; Muslins, Ladies' latest style Collars and Handkerchiefs, Black Silk Handkerchiefs, Ponge do. White do., Ribands, all colors, Spool Thread, Tape, white and black Flax Thread, colored and black Sewing Silk, Tuck and Side Combs, Dress Combs, Bonnet Wire, Stockings, Men's Cotton and Silk Handkerchiefs, Men's Socks; Eyelets, metal and ivory, Pins, Buttons, all qualities; Fans, Silk Braid, all colors; Thread Mitts, black Kid Gloves, Suspenders, Apron Checks, Cambricks, Scotch Ginghams, Russian Diaper, large lot of bleached and unbleached Shirting, Table Diaper, Brown Linen, Pantaloon Stuffs, and many other articles in the Dry Good line.

A large lot of Hardware. Knives and Forks, Pocket Knives, Hinges and Screws, all qualities and prices, Stock and Pad Locks, from the very best to the most common; Files, of all qualities; Tacks, of all numbers; Iron and Steel Squares, Gimlets, Coffee Mills, Blacking and Brushes of superior quality; Sifters, Cotton Cards, Scissors, Iron and Brass Snuffers, of an excellent quality, Table and Tea Spoons, Spice Mortars, Looking Glasses, and many other articles, such as Shoe Knives, Awl blades, &c. &c.

A large lot of cheap Crockery. Plates, all sizes; Cups and Saucers, large lot; Bowls Pitchers, Chambers, Dishes, and Common Tumblers, al of which will be sold *low*, as they were bought low.

Straw Hats, *of all qualities and prices*

All of the above Goods will be sold low for Cash, and as my stock of Groceries is very heavy, I am determined to please all who will call and examine the articles; for I know they are not inferior to any in Raleigh.

JOHN R. WHITAKER.

March 31, 1845. 543—4w.

Horse Stolen.

WAS stolen, on the night of the 26th instant, from my residence in Person county, my horse, saddle, bridle and martingals. The horse is a bay, six years old, about five feet three inches high, of fine appearance, carries a high head, paces when forced, and higher than common horses on the top of his rump; the saddle is an old one, has been covered with blue broadcloth which is torn off except around the edges; snaffle or ring bit bridle, black leather and extra half rein to tie with; an old pair of martingals, have been broke and sewed together with a waxen end.

I have no doubt but that the said horse was stolen by a young man named James Winn, about 18 years of age, smooth face, little or no beard, long hair, rather slow spoken and speaks something of the northern language, ordinary height and chunky built, weighs about one hundred and forty or fifty pounds. He had on a blue Kentucky Jeans coat, worn through on the elbows and under the arms, a pair of Cassinet pantaloons, steel-mixed color about half worn, and an old hat which has the appearance of being wool but is fur, tolerably wide brim.

I will give twenty dollars reward for the apprehension of the thief, or delivery of the horse.

F. TOWNSEND.

Roxboro', March 28, 1845 543-3t.

WANTED,

TWO apprentices to the Printing Business. The boys must be "*smart*"—must be able to read and write—and be bound for a term of years. Boys from the country would be preferred. Apply at the Standard Office.

A Bargain in a Raleigh Farm,

MAY be had by applying to the Subscriber on the premises, or to Isaiah Respass Esq. in Washington, in this State, in that handsome, healthy and well improved Farm with 370 acres of land in a body, called Margaretta; adjoining the City lands, and only a few minutes ride or walk distant from the Capitol, Public Offices, Court House, Banks, Stores, Churches and Schools of the City of Raleigh, having the City open to view. Than which, there is not a more desirable family residence, nor one capable of greater profit, near the seat of Government. The Landscape is beautiful, the air balmy and healthful, with delicious spring water issuing from the Rocks in the lawn near the Dwelling house. This is a well built, well finished and showy house containing seven good rooms, each with a fire place, beside cellar, porticos, piazas, closets, and China presses, and in the midst of spacious, well shaded and ornamented yards. The out houses are numerous and excellent of their kind. The land in its present neglected condition is capable of making 250 barrels of corn a year, besides other crops.

A little pains in a *Market Garden* and *Dairy* would enable its owner to sell in the City, every day in the year, $2 worth, or upwards, of Milk, Cream, fruits and vegetables. The farm hands, at leisure times, could make on the farm $1500 worth of bricks, for Market. At a very small expense, a *Grist Mill*, fitted for grinding Meal and Cobs, Corn and Shucks, can be erected on the Mill branch, in the farm where has been a Mill, and the dam and stones are still there and being fed by *Springs* it could grind 8 hours out of every 24, and pay all of $3 in toll daily.

Rock Cutters say that a *surface Quarry* of the finest *building granite* can be opened in the front field, which would pay a rent of several hundred dollars a year. A rock wall encloses a part of the front of the farm and may be cheaply extended at pleasure. There is wood enough on the land for the use of the farm, and some say, $1000 worth to spare.

Mr. Charles Parish paid for this land in woods, nearly 30 years ago, more than $6,000, as his Deeds in my possession, show, and he certainly expended more than $4,000 in its improvement. His Overseer says he raised on the Farm some years, 350 barrels of corn and 40 bales of Cotton, beside crops of wheat, oats, peas and potatoes, all of which and clover, grow well on the land; and it being mostly red land, it is susceptible of high and permanent improvement by proper culture. Any man who will work it right, can support the family and stock on the farm and nett $2000 a year from its yield; and the property is obliged to steadily increase in value. As a mere *investment*, it would be highly profitable property, or to a gentleman in the sickly country, who had, or had not, *children to educate*, and desiring *profit* as well as *health*, it would be a very valuable acquisition, or for the *Deaf* and *Blind Schools*, no place could surpass it, and certainly none can be had, that would answer so well, at twice its cost.

This entire property, with firm title and immediate possession, can be had at $3,000; one third Cash in hand, and one and two years credit on the balance, with interest—or all would be taken in North Carolina Bank Stock, or in Rail Road Bonds endorsed by the State, or in approved Notes, of sums beyond $100.

Or as the land can be advantageously *divided into three parts*, I will so divide and sell each part separately, if soon applied for: The *front land* to the Mill branch, and up the branch to contain 100 acres, with the Mansion house and its out houses including the Mill privilege and granite formation. On about 2-3 of which, 125 barrels of corn beside other crops, were made three years ago. The price of this part separately, is $25 per acre, payable half in cash and half in one year, at interest, if well secured. Although Mr. Parrish paid for much of it $44 per acre, when in bushes, and lands adjourning it have recently sold from $33 to $55 per acre, with little or no improvements on them. The land *east of the mill branch*, contains about 220 acres—part of it is finely wooded, and has the Overseers houses, two Granaries, and Threshing Machine. The tenant now there expects to raise 100 barrels of corn beside other crops, on less than half the open land this year. The City is open to its view, and a fine spring very convenient. It may be made a beautiful family residence. The price of this part, separately, is $5 per acre; altho' adjoining lands have lately sold for $15 per acre. The *third division* would be about 50 acres on the Race Tract Road, adjoining Mr. Rorke's and Mr. Boylan's lots; there is a handsome scite for building on it, covered with a grove of trees, the land is excellent and would make a fine farm, and when Mr. Boylan's lot is cleared it would have the city in view. The price for this part separately, is $15 per acre, half in cash and half in one year. Adjoining lands have often sold from $30 to $50 per acre, unimproved, and will do it again.

JOSEPH B. HINTON, Agent.

Raleigh, N. C. March 1st, 1845. 513—3t.

VALUABLE LOT FOR SALE.

The sale of that VALUABLE LOT, situated next below the Market-house in Raleigh, belonging to the estate of Mathew Shaw late of said City, containing seventy by two hundred and ten feet, will be made by the trustees appointed by his will to sell the same, on the Monday of the next County Court week in May next, the 19th day of May next, at the premises, between the hours of eleven o'clock in the forenoon and one o'clock in the afternoon.

It will be offered for sale in three parts, so as to form three lots or plats of ground each sixty feet by seventy, with a lane or alley between each one and the market lot, so that each one of the lots shall have a building front and alley opposite to the market lot and the alley in front to be kept open free for the common use of the owners of these three lots and the public.

A credit of 6 and 12 months will be given for the purchase money—and bond with approved security required previous to delivering a deed.

JAMES & MATHEW SHAW, Trustees.

Raleigh, 29th March, 1845. 543-ts.

NEW
SPRING AND SUMMER
GOODS.

OLIVER & PROCTER,
MERCHANT TAILORS,

HAVE just received and are now opening at their store, five doors south of Williams, Haywood & Co's Drug Store, a complete and elegant assortment of Goods in their line, to which they invite attention, embracing blue, black and fancy CLOTHS, of every description; plain and fancy CASSIMERES, double and single milled; DRAP D'ETE, plain and figured, for summer coats and pantaloons; DRILLINGS of every variety; SCHALLYS, SATINS, figured SILKS, and MARSEILLES; together with a general assortment of

Fancy Articles,

to wit: Stocks, Scarfs, Neck-ties, Gloves, Suspenders, Shirt Collars very elegant, &c. &c.

The above Goods will be manufactured to order at the shortest notice, and can be recommended with great confidence, having been selected by Mr. OLIVER in person in the Northern markets, within the last two weeks; and will be sold from twenty to twenty-five per cent. less than ordinary credit prices. Recollect that OLIVER & PROCTER have *reduced the prices of clothing in this city*, since their commencement in business, *twenty five per cent!*

We now return thanks to our numerous friends, for the very liberal support we have received at their hands, and hope, by attention and a desire to please, to merit its continuance. OLIVER & PROCTER

P. S. The *latest* London, Paris and Northern FASHIONS, just at hand.

Raleigh, March 25, 1845. 542-6t.

FASHIONABLE
Boot and Shoe Making.

HENRY PORTER has just received from the North, a beautiful supply of LEATHER of all kinds, and is fully prepared to execute all orders at the shortest notice. Grateful for former patronage, he respectfully solicits a continuance of it, promising to his customers fidelity and despatch.

He has just engaged the services of Mr. CROMLEY, well known as one of the best Boot and Shoe makers in the Union, and can therefore promise, without fear of failure, to turn out as good work as can be got in the Northern Cities.

Raleigh, March 24, 1845. 542—6t.

LEGAL.

STATE
vs.
FRANCIS E. RIVES, } IN SUPREME COURT, *December Term*, 1844.

The Defendant was indicted in Northampton County, for tearing up a part of the Portsmouth and Roanoke Rail Road, contrary to the 7th Section of the Act of Assembly, creating the Portsmouth and Roanoke Rail Road Company.

He justified upon the ground that he had bought so much of the Road as lay in Northampton County, at a sale made by the Sheriff of Northampton, under an Execution, issuing 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 the 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 last Term, through Chief Justice RUFFIN, 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 materials, 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 insured 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 rights 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 easement or right of way over the land; for in that case the law would probably, in favor of creditors, regard those materials as mere fixtures of an occupier of land, which might be 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 chattles, and were sunk into the realty.

We have said that the corporation had an estate 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 keeping up the road during the continuance of the corporate existence by the act given to them (which is sixty years) and declares that, in all things, the company shall have the same power and authority over said land so laid off during their existence as a corporation under the laws of this State, as though they owned the fee-simple therein. This language can signify nothing less 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 far beyond 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, those considerations, if true, could avail nothing—for the debtor has no interest in the question, to whom the property shall go after 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 paid 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 public have only an easement, and therefore the remedy for obstructing the passage over it is by indictment merely. But the estate, the right of soil, 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 land. But in the case of a rail road, it would be manifestly incongruous not to give to the corporation the action for destroying embankments and the superstructure of the road, which the company erected, with its funds, but to give such action to the original owner of the land. From the nature of things, therefore, the necessary construction of a charter for such a corporation must be to vest an estate in the land in the company, unless it be clear that the contrary was intended.

Having ascertained that the corporation has an estate in the land and not a mere easement, it seems to follow, that such estate is liable to execution. In reference to corporations generally, it certainly is true, that in our law their estates, real or personal, are subject to sale on *feri facias* in the same manner as those of natural persons. By the act of 1820, the plaintiff, in a judgment against a corporation, is entitled to either a *distringas* or a *feri facias*, and they may be levied on the money, goods, chattels, lands and tenements of the corporation. Rev. St. c. 26, s. 5. 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 necessary inference of a legislative intention to that effect. There is no such express enactment. If there was, it would be conclusive; for, doubtless, the legislature can prescribe what shall or shall not be the subjects of execution. But, it was contended for the State, that such exemption arose from the nature of the property vested in the company and its purposes, and from the interest of the public in the road. It was urged in reference to the interests of the corporation, that the preservation of their franchise of receiving toll, which depended on their remaining in possession of and keeping up the road, and their liability to penalties and pains for not keeping up the road, presented considerations of so much more weight than any which the mere satisfaction of a debt to 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. It is intangible and vested in an artificial being of a particular organization, suited, in the view of the legislature, to the most proper and beneficial use of the franchise; and, therefore, it cannot be assigned to a person, natural or artificial, to which the legislature has not committed its exercise and emolument. We admit also, that the right of passing or of transporting persons or things over the land of another for toll, is but an easement 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, whether a natural person or a body politic, has a vested property in a tangible, personal or real thing, that such thing may not be taken in execution, although it be useful or indispensable to the most beneficial or even any enjoyment of the franchise; unless, indeed, it be declared by the legislature not to be liable to distress or sale. It may be very 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 tangible 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 subjecting 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 corporations 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 its debts, although at the expense of 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 defiance 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 it is not able 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, be 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 the debtors prevented from retaining their property to the disappointment of creditors. 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 sound and salutary maxims of morals and law, it requires much more to be opposed than an argument of inconvenience, that the debtor loses much more than the creditor gets. Still, it is to be replied, that the creditor 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 expressly 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 of property of the creditor employed in constructing the road. That would be the view properly 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 the Road, the execution is expressly given against 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 peculiar preference should be given to that demand above all others, as to the mode of obtaining satisfaction. That case was particularly mentioned, because it was proper to give a summary assessment of the damages and speedy satisfaction of them, as a jurisdiction for the taking of private property.

But when another debt is reduced to judgment by the regular course of law, that ought 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 execution for its debts, as the property of corporations generally is liable on execution for their debts. In other words, it was not intended to discriminate between rail road corporations and other corporations as to their duty of paying debts, or the modes of coercing them to the performance of their duty. It was admitted by the Counsel for the State, that this proposition must be received as true, in respect to all the other property of the company, except the land on which the line of roads run, such as the cars, locomotives, supply of wood, lumber and iron 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 ceased, so that *eo instanti* the land reverted to the former owner, and, consequently, the purchaser got nothing; and so, as the law does nothing in vain, and especially when attended with such destructive consequences, it was inferred that there could be no such sale. But the position is not true, that the corporation is dissolved by the sale of a part of the road, nor, indeed, immediately upon the sale of the whole road, as it seems to us. It may because of forfeiture, if insisted on by the State; and without any prosecution, it may, in process of time, amount to a forfeiture. But, by the express provision of the Statute, it requires disuse of the corporate privileges and powers for two years to amount, of itself, to a forfeiture. Now, although it be generally true, that upon the expiration of a corporation or its dissolution, unless otherwise provided by Statute, the real estate, undisposed of, will revert to the donor or original owner; yet, that is only true as to such estate as remains in the corporation at the moment of its dissolution, and does not apply to such as had been divested out of it either by its own act or by the act of law. In this case, therefore, the sale was not vain, but the purchaser got the estate in the land which belongs to the company. If that was not so by the common law, it would, we think, necessarily be so upon the construction of our Statute, which gives the writ of *feri facias* against the company; for, instead of arguing that there should be no sale, because the purchaser gets nothing, the argument is the other way, that the purchaser does get the estate, because the sale of it is authorized; and, therefore, even upon a subsequent dissolution of the corporation, the land would not revert until by lapse of time the charter would have expired. But, really, there is no more ground for exempting the line of road than the other property of the company: for its operations, the beneficial use of the road either to the company or the public, is as effectually suspended by 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 been sold, or are purposely withheld and concealed by the company; because the Sheriff cannot rightfully sell land while there are personal chattles. If so, then the creditor is reduced to the last resort, namely: on the land for his debts, and for the reasons already given, it must go rather than he should be defrauded of his debts.

The question has thus far been considered in reference to the conflicting claims of the creditor and the coporation to the protection of the law. The counsel for the State, however, interposes, as a further and distinct objection to the sale of the road, the right of the public to the use of it as a highway, and the *necessity* that the company should retain the road to enable it to perform its duty to the public by keeping it up as a highway. This position rests on the assumption that because the road is a highway it is *ex vi termini* not liable to execution. Now, we cannot assent to that proposition in the extent here laid down. Its correctness depends on the sense in which the term "highway" is used, and on the Legislative intention as to the liability of the property of rail road companies for their debts. The Court said in the case of the Raleigh & Gaston R. R. vs. Davis, 2 Dev. & Bat. 451, that a rail road is a highway; but it does not follow, and certainly it was not intended, that it should be understood to be a common public highway, on which all citizens were free to pass, and which, from necessity, could not be the subject of execution, because there is no estate in the public, and because the easement is *exclusively* in the public. In that respect there is an essential difference between the one kind of roads and the other. Rail roads, although *public juris* in some respects, are the subjects of private property, and it is in the latter character that they are liable to be sold, unless forbidden, by the Legislature: not the franchise, but the estate of the corporation in the land, which is a distinct thing from the franchise. In the sense, that the land and other things taken for its construction are taken for a public use, inasmuch as it is a mode of opening avenues of communication between different parts of the State, and with other States, and, therefore, that it was a proper 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 respects as to the modes of enforcing its due reparation and punishing its obstruction. The latter is expressly made an indictable offence, as is shown by the case now under consideration. The State may compel the company by *mandamus* to make 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 keeping it in repair, if adequate and necessary to that end. *The case of the Severn & Wye Railway Company*, 2 B. & Ald. 646. So, while the company is in possession and using the road, it must be indictable for non-repair, upon the settled principle that they are bound to repair by their engagement to the public in accepting their charter 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 Legislature as to the liability of it to execution, necessarily leaves it thus liable. Roads of this kind have peculiar properties—having a double aspect, the public service and private profit. But both must necessarily yield, in honesty and justice, to the consequences of the impracticability of constructing and keeping up the road by the means