soil, is an opinion which certainly prevails very extensively. It is not an unreasonable opinion. Personal property may follow the person anywhere; and its character, if found on the ocean, may depend on the domicil of the owner. But land is fixed: wherever the owner may reside, that land is hostile or friendly, according to the condition of the country in which it is placed. It is no extravagant perversion of principle, nor is it a violent offence to the course of human opinion, to say, that the proprietor, so far as respects his interest in this land, partakes of its character; and that the produce, while the owner remains unchanged, is subject to the same disabilities. In condemning the sugars of Mr. Bentzon as enemy property, this court is of opinion, that there was no error, and the sentence is affirmed, with costs.

Sentence affirmed.

Evans *v.* Jordan and Morehead. (*a*)

Patents.

The act of January 1808, for the relief of Oliver Evans, does not authorize those who erected his machinery between the expiration of his old patent and the issuing of the new one, to use it, after the issuing of the latter.[1]

This was a case certified from the Circuit Court for the district of Virginia, in which the judges were divided in opinion upon the question, whether, after the expiration of the original patent granted to Oliver Evans, a general right to use his discovery, was not so vested in the public, as to require and justify such a construction of the act passed in January 1808, entitled "an act for the relief of Oliver Evans" as to exempt from either single or treble damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent, and previous to the passage of the said act.[2]

The act (6 U. S. Stat. 70) authorizes the secretary of state to issue letters patent to Oliver Evans, in the manner and form prescribed by the general patent law, granting to *him for the term of fourteen years the exclusive right of making, using and vending for use the machinery [*200 in question, "provided, that no person who may have heretofore paid the said Oliver Evans for license to use his said improvements, shall be obliged to renew the said license, or be subject to damages for not renewing the same; and provided also, that no person who shall have used the said improvements, or have erected the same for use, before the issuing of the said patent, shall be liable to damages therefor."

Harper, for the plaintiff.—The former patent of the plaintiff having expired, congress, in consideration of the particular circumstances of his case, authorized a new patent to issue for another term of fourteen years. Between the expiration of the old and the issuing of the new patent, the defendants had erected and used, and continued to use, the plaintiff's machinery, in the

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(*a*) March 2d, 1815. Absent, Todd, Justice.

[1] Evans v. Weiss, 2 W. C. C. 342.

[2] See 1 Brock. 248, for the opinion of the chief justice, which was unanimously sustained by this court. And for the decisions on Evans's patent, see 3 Wheat. 454; 7 Id. 356, 453; Pet. C. C. 215, 322; 3 W. C. C. 408, 443.

manufacture of flour, contending that they were protected by the proviso of the act of January 21st, 1808.

We contend, that the proviso does not authorize them to continue the use of the machinery, after the issuing of the new patent, but merely protects them from damages for having used and for having erected for use the machinery in question, prior to the issuing of the new patent. The second patent was intended to place Evans in the situation in which he would have been, if the first patent had continued in force, except as to his right to damages for acts done in the intermediate time between the first and second patent. If the defendants chose to continue to use the machinery, after the new patent, they were bound to pay for the right to use it.

E. J. Lee, and *P. B. Key*, contrà.—If the construction contended for on the other side be correct, the proviso was wholly useless, because the defendants needed no such protection. Evans could have no claim against them, for acts done after his patent had expired, and before the issuing of the new patent. The defendants had a full and perfect right to erect and use the
*201] machinery. A law to oblige them now to abandon *their property, or to pay what Mr. Evans may choose to exact, is in the nature of an *ex post facto law*; and although it may not be absolutely unconstitutional, yet is so far within the spirit of the constitution, that this court will not give such a construction to the proviso, if it can possibly be avoided. The proviso says, that no person who shall have erected the machinery for use, shall be liable to damages therefor. The defendants had erected the machinery for use, and are, consequently, not liable therefor. What can the proviso mean, unless to give those who are in the situation of the defendants, the right to use their own machines lawfully erected? The inventions had become public property; everyone had a right to use them. Congress did not mean to take away that vested right from those who had availed themselves of it. To deprive a person of the use of his property, is equivalent to depriving him of the property itself. Congress could not mean to do this. This court will give the act such an equitable construction, as will give effect to the proviso.

Harper, in reply.—The words of the proviso are clear and explicit, and admit not of construction. The legislature may have supposed that the new patent, which was intended to be a continuation of the old one, might have subjected those who had already erected the machinery, to damages, and intended to guard against them. It is not certain, that under the law, under which the patent issued, this would not have been the effect; but it is sufficient, if the legislature supposed it would have been. We are not bound to show the motives of the legislature; if their words are clear and explicit, there is no room for construction. The acts which are protected by the proviso are acts done before the issuing the patent; the opposite counsel contend, that the legislature, when they said "before," meant after. The proviso is too plain to bear an argument.

March 4th, 1815. (Absent, Todd, J.) WASHINGTON, J., delivered the
*202] opinion of the court, as follows:—*The question certified to this court, by the circuit court for the district of Virginia, and upon which the opinion of this court is required, is, whether, after the expiration of the

original patent granted to Oliver Evans, a general right to use his discovery was not so vested in the public, as to require and justify such a construction of the act passed in January 1808, entitled "an act for the relief of Oliver Evans" as to exempt from either treble or single damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent and previous to the passage of the said act.

The act, upon the construction of which the judges of the circuit court were opposed in opinion, directs a patent to be granted, in the form prescribed by law, to Oliver Evans, for fourteen years, for the full and exclusive right of making, constructing, using and vending to be used, his invention, discovery and improvements in the art of manufacturing flour and meal, and in the several machines which he has discovered, invented, improved and applied to that purpose.

The proviso upon which the question arises is in the following words: "provided, that no person who may have heretofore paid the said Oliver Evans for license to use the said improvements, shall be obliged to renew said license, or be subject to damages for not renewing the same; and provided also, that no person who shall have used the said improvements, or have erected the same for use, before the issuing of the said patent, shall be liable to damages therefor."

The language of this last provision is so precise, and so entirely free from all ambiguity, that it is difficult for any course of reasoning to shed light upon its meaning. It protects against any claim for damages which Evans might make, those who may have used his improvements, or who may have erected them for use, *prior* to the issuing of his patent under this law. The protection is limited to acts done prior to another act thereafter to be performed, to wit, the issuing of the patent. To extend it, by construction, to acts which might be done subsequent to the issuing of the patent, would be to make, not to interpret the law.

*The injustice of denying to the defendants the use of machinery which they had erected, after the expiration of Evans's first patent, and prior to the passage of this law, has been strongly urged as a reason why the words of this proviso should be so construed as to have a prospective operation. But it should be recollected, that the right of the plaintiff to recover damages for using his improvement, after the issuing of his patent under this law, although it had been erected prior thereto, arises, not under this law, but under the general law of the 21st of February 1793.(a) The provisoes in this law profess to protect against the operation of the general law, three classes of persons; those who had paid Evans for a license prior to the passage of the law; those who may have used his improvements; and those who may have erected them for use, before the issuing of the patent. [*203

The legislature might have proceeded still further, by providing a shield

(a) The 5th section of the act of 21st of February 1793, which is the only section of that act which gives damages for violation of the patent-right, is repealed by the 4th section of the act of the 17th of April 1800 (2 U. S. Stat. 38), the 3d section of which act gives treble damages, for the violation of any patent granted pursuant to that act, or the act of 1793.

for persons standing in the situation of these defendants. It is believed, that the reasonableness of such a provision could have been questioned by no one. But the legislature have not thought proper to extend the protection of these provisoes beyond the issuing of the patent under that law, and this court would transgress the limits of judicial power, by an attempt to supply, by construction, this supposed omission of the legislature. The argument, founded upon the hardship of this and similar cases, would be entitled to great weight, if the words of this proviso were obscure and open to construction. But considerations of this nature can never sanction a construction at variance with the manifest meaning of the legislature, expressed in plain and unambiguous language.

The argument of the defendants' counsel, that unless the construction they contend for be adopted, the proviso is senseless and inoperative, is susceptible of the same answer. *Whether the proviso was introduced
*204] from abundant caution, or from an opinion really entertained by the legislature, that those who might have erected these improvements, or might have used them, prior to the issuing of the patent, would be liable to damages for having done so, it is impossible for this court to say. It is not difficult, however, to imagine a state of things which might have afforded some ground for such an opinion.

Although this court has been informed, and the judge who delivers this opinion knows, that the former patent given to Evans had been adjudged to be void by the circuit court of Pennsylvania, prior to the passage of this law, yet that fact is not recited in the law, nor does it appear that it was within the view of the legislature: and if that patent-right had expired by its own limitation, the legislature might well make it a condition of the new grant, that the patentee should not disturb those who had violated the former patent. This idea was certainly in the mind of the legislature which passed the act of the 21st of February 1793, which, after repealing the act of the 10th of April 1790, preserves the rights of the patentees under the repealed law, only in relation to violations committed after the passage of the repealing law.

If the decision above mentioned was made known to the legislature, it is not impossible, but that a doubt might have existed, whether the patent was thereby rendered void *ab initio*, or from the time of rendering the judgment; and if the latter, then the proviso would afford a protection against all preceding violations. But whatever might be the inducements with the legislature to limit the proviso under consideration, as we find it, this court cannot introduce a different proviso, totally at variance with it in language and intention.

It is the unanimous opinion of this court, that the act passed in January 1808, entitled "an act for the relief of Oliver Evans," ought not to be so construed as to exempt from either treble or single damages, the use, subsequent to the passage of the said act, of the machinery therein mentioned, which was erected subsequent to the expiration of the original patent, and previous to the passage of the said act. Which opinion is ordered to be certified to the circuit court for the district of Virginia.