lect, in not paying, in time, a debt justly due from himself, than to any other cause whatever. A person so regardless of his interest, as well as duty, as Mr. Prout has been, who has not only refused to pay a note indorsed by him, when due, but has put the holders to the trouble, delay and expense, of proceeding to judgment against him, has but little right to be dissatisfied, if a court of equity shall not think itself bound, by any extraordinary exertions of its powers, to extricate him from a difficulty and loss which he might so easily have avoided.

The decree of the circuit court is reversed, and the complainant's bill must be dismissed, with the costs of that court, to be paid by the complainant to the defendant.

Decree reversed.(*a*)

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*529] *Burton's Lessee *v.* Williams *et al.*

Lands in Tennessee.

The state of North Carolina, by her act of cession of the western lands, of 1789, ch. 3, recited in the act of congress of 1790, ch. 33, accepting that cession, and by her act of 1803, ch. 3, ceding to Tennessee the right to issue grants, has parted with her right to issue grants for lands within the state of Tennessee, upon entries made before the cession.

But, it seems, that the holder of such a grant may resort to the equity jurisdiction of the United States courts for relief.

Error to the Circuit Court of East Tennessee. This was an action of ejectment, brought by the plaintiff in error, to recover the possession of 5000 acres of land, lying in Maury county, in the state of Tennessee, and granted to the lessor of the plaintiff, by the state of North Carolina, on the 14th of July 1812.

The grant was founded on an entry, made on the 27th of October 1783, in the land-office of North Carolina, commonly called John Armstrong's office; on a warrant of survey, issued from the same office, on the 10th of July 1784; and on a survey made on the 26th of February 1812, under an act of the legislature of North Carolina, passed in 1811. The lands lay in that part of Tennessee in which the disposition of the vacant and unappropriated lands was reserved to the United States, by the act of congress of
*530] the 18th of April 1806, ch. 31. This title was offered *in evidence by the plaintiff, at the trial, and was objected to by the defendant, who claimed under a grant from Tennessee. The evidence was rejected by the court below; on which the plaintiff excepted, and the cause was brought by writ of error to this court.

March 2d. *Harper*, for the plaintiff, argued, that the state of North Carolina, under the conditions of her act of 1789, ch. 3, for ceding the western lands to the United States, had a right to perfect grants on all such entries as this, at any time after the cession, and not merely within the time which was limited by the then existing laws of North Carolina; the conditions of the cession being recited and confirmed in the act of congress of the 2d of April 1790, ch. 33, accepting that cession. That the act of North Carolina of 1803, ch. 3, for ceding this right to the state of Tennessee, with

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(*a*) See note to Lanusse *v.* Barker, *ante*, 148.

the assent of congress, was wholly inoperative and void, for want of that assent; congress not having assented, simply and unconditionally, as was intended by the legislature of North Carolina, but having coupled its assent with conditions destructive of the rights of that state and her citizens, under the act of cession. That, consequently, the act of congress of the 18th of April 1806, ch. 31, being founded on this act of North Carolina, and on the act of Tennessee of 1804, ch. 14, which rests on the same basis, is without authority, and void. That even if the act of North Carolina of 1803, ch. 3, were operative, it merely gives the state of Tennessee concurrent power with North Carolina, for perfecting these *titles, and does not divest the [*531
power of the latter state. And that if the power granted to Tennessee by this act was absolute and exclusive, while it existed, it reverted to North Carolina, when Tennessee, by assenting to the conditions imposed by congress in the act of April 18th, 1806, ch. 31, disabled herself from exercising this power or procuration, according to the terms and intentions of the grant from North Carolina. Co. Litt. 52, 202; Sheph. Touchstone 283.

Campbell, contrà, contended, that the state of North Carolina, by her act of 1803, ch. 3, transferred to Tennessee all the power to issue grants, reserved by her in the act of cession of 1789, on the conditions that the state of Tennessee should agree to said act, as a compact between the two states, and that the assent of congress should be obtained thereto. Tennessee did agree to the act, by her own act of 1804, ch. 14, and the assent of congress was given thereto, by the act of the 18th of April 1806, ch. 31. Consequently, the state of North Carolina had no power to issue the grant in question. That the provisions in the act of congress of the 18th of April 1806, ch. 31, relate only to the final disposition of the vacant lands in Tennessee, remaining after all the claims from North Carolina are satisfied, according to the conditions of the cession act, and do not impair the right acquired under titles derived from the latter state. That the transfer of power to perfect grants from North Carolina to Tennessee, vested *it in the latter, [*532
unconditionally and exclusively; and the power having once vested, cannot revert, or be divested. The authorities cited, as to reversion of powers, upon a breach of the conditions on which they were granted, are wholly inapplicable to transactions between independent communities and states. But even supposing the same rules in this respect were to be applied to their acts, as to those of private individuals, he contended, that Tennessee had performed the condition as near to the intent as might be, and that whatever is an equitable, ought to be considered a legal execution of a power. Co. Litt. 217; *Zouch* v. *Woolston*, 2 Burr. 1136; *Earl of Darlington* v. *Pulteney*, Cowp. 260. That the public documents, necessary to enable Tennessee to execute the power in question, were delivered to that state, according to the compact of 1803; and that it was executed by her, from 1806 to 1811, with the apparent acquiescence of North Carolina, which state ought not, therefore, now to be permitted to object, that the assent of congress thereto had not been sufficiently given. That this assent was deemed necessary to comply with that provision in the constitution, art. 1, § 10, which declares, that "no state shall, without the consent of congress, enter into an agreement or compact with another state," and because the United States had an interest in the subject-matter of the compact. This assent

was not intended for the benefit, or to secure the interests, of North Carolina; and the approbation of congress having been sufficiently manifested,
*533] that state has no *right to object to the mode in which the assent was given. That by her act of cession, the state of North Carolina reserved the right to issue grants, only in conformity to her then existing laws, but not to pass new statutes on the subject, like that of 1811. And that the state of Tennessee, by an act passed in 1812, declared this grant, and all others issued under similar circumstances, void; and provided, that they should not be read as evidence of title, in any court of the state; thus asserting her exclusive right, under the compact of 1803, to issue grants for lands within the state.

March 9th, 1818. JOHNSON, Justice, delivered the opinion of the court.—This case originates in a collision of interest and opinion between the states of North Carolina and Tennessee, and the United States, relative to their respective rights, in certain instances, to perfect titles to the soil of Tennessee. North Carolina, in the year 1812, issued the grant set up on the trial, in behalf of the plaintiff. Both Tennessee and the United States contend that North Carolina has relinquished the right to issue such a grant. And North Carolina replies, that her cession was conditional, and that the condition has been violated, or that the *causus fœderis* has never arisen.

The whole difficulty arises from the obscure wording, or doubtful construction, of the act of congress of April 18th, 1806. But after comparing all the acts of the respective states upon the subject, reviewing the events which led to the passage of that act of congress, and determining the motives
*534] which influenced *the parties in making the compact, which the act of congress contains, we are of opinion, that an exposition may be given, perfectly consistent with good faith, and leaving to North Carolina no reasonable ground for complaint. We here disavow all inclination, on the part of this court, to interfere, unnecessarily, in state altercations; we enter into the consideration of such collisions only so far as to secure individual right from being crushed in the shock. But in all such discussions, the questions necessarily arise, what has a state granted? and what was the extent of its power to grant? Those questions cannot be avoided.

It will be recollected, that the state of Tennessee originally constituted a part of the state of North Carolina; that in the year 1789, the latter state made a cession, both of soil and sovereignty, to the United States, of all the soil and country now comprised within the limits of Tennessee; and that in the year 1796, the state of Tennessee was admitted into the Union. Previous to the act of cession, North Carolina had made title to a considerable proportion of the soil of Tennessee, under circumstances which attached the title to a designated portion of soil, so that nothing more was necessary to vest a complete legal title, but what, in contemplation of her laws, was a mere formality—a survey and grant. In other instances, she had issued warrants for a specified quantity of land, but under which the holder had not yet definitively fixed his land-marks, so that he did not hold land, but only the evidence of a right to acquire land. These, and several other
*535] descriptions *of land-titles, as they are called, the act of cession makes provision for securing to the individual, to the full extent to which he was enti'led under the laws of North Carolina. The words of the deed of

cession are these : "Where entries have been made agreeably to law, and titles under them not perfected, by grant or otherwise, then and in that case, the governor for the time being shall, and he is hereby required to perfect, from time to time, such titles, in such manner as if this act had never been passed. And that all entries made by, or grants made to, all and every person or persons whatsoever, agreeably to law, and in the limits hereby intended to be ceded to the United States, shall have the same force and effect, as if such cession had not been made; and that all and every right of occupancy and pre-emption, and every other right reserved by any act or acts, to persons settled and occupying lands within the limits of the lands hereby intended to be ceded as aforesaid, shall continue to be in full force, in the same manner as if the cession had not been made, and as conditions upon which the said lands are ceded to the United States :" And, "further, it shall be understood," &c., making a provision for the case of persons who shall lose the benefit of a location, because of its having been laid on a place previously located, and declaring that "they shall be at liberty to remove the location of such entry or entries, to any lands on which no entry has been specifically located, or on any vacant lands included within the limits of the lands hereby intended to be ceded." *Thus, under the act of cession, the United States held the right of soil in the vacant lands of Tennessee, qualified by the right which the state of North Carolina retained of perfecting the inchoate titles created under her own laws. [*536

When the act was passed, admitting the state of Tennessee into the Union, congress omitted to insert any express provision respecting unappropriated land; and on this circumstance, the state of Tennessee set up a claim to all such land within her designated limits. But still she was embarrassed in the use of her supposed acquisition, by the rights which North Carolina retained of perfecting her own land-titles, and she could not obtain from a state, a cession of that right, without the consent of congress. This afforded the United States, ultimately, the means of resuming, in part, the soil that they were supposed inadvertently to have ceded to Tennessee, and was the ground-work of the compact which is exhibited in the act of 1806. The state of North Carolina, in the meantime, had passed an act, in 1803, entitled "an act to authorize the state of Tennessee to perfect titles to land reserved to this state by the cession act," but expressly subject to the assent of congress; and the two great objects of the act of congress of 1806, as avowed in the title, are "to authorize the state of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same;" or, in other words, to enable the state of Tennessee to acquire the absolute unqualified right (so far as it comported with *private right) of appropriating the soil within its limits, and, *eodem flatu*, to enter into a partition of that soil with the United States, connected with the rights thus acquired from North Carolina. And such, in effect, is the operation of the compact of 1806. The two contracting parties commence with drawing a line across the state, and then stipulate, that the soil to the westward shall be vested absolutely in the United States, and that to the eastward, in Tennessee. Now, it is absurd, to suppose, that when the United States proposed to acquire to themselves the absolute dominion over the soil to the westward, that they would have withheld that assent, without which Tennessee could not acquire it, [*537

and of course, could not convey it to the United States. The words in which the assent of congress is expressed, are found in the close of the 2d section; they are these, "to which said act, the assent of congress is hereby given, so far as is necessary to carry into effect the objects of this compact." But these latter words, although at first view they may appear to be restrictive, really, in their operation, as here applied, must give the utmost latitude to that assent; because, nothing short of that latitude would give effect to the provisions of the compact. And upon considering the act of North Carolina, to which they refer, it will obviously appear, that those restrictive words were introduced with a view to another object. There are several provisions of mere detail contained in that act; these could take effect, without the assent of congress, and to those provisions these restrictive words must have had reference.

*538] *But it is contended, that in the very compact between the United States and Tennessee, the conditions of the act of cession have been violated, and the state of North Carolina was authorized to resume her rights. Without admitting either the premises or conclusion of this argument, we may be permitted to observe, that it is, at least, a perilous doctrine. That the members of the American family possess ample means of defence, under the constitution, we hope, ages to come will verify. But happily for our domestic harmony, the power of aggressive operation against each other is taken away; and the difficulty and danger of applying to the contracts of independent states, the principles of the common law relative to conditions, would, if necessary, incline this court to consider words of condition, in such cases, as words of contract. In this instance, the state of North Carolina has asserted the common-law right of entering for condition broken, and the unfortunate consequences may well be held up as a warning to others.

But in this case, the words used are not words of condition. On the contrary, the words of condition used with relation to the provision for securing vested freehold rights are dropped, and those applied to the other class of rights, are appropriate only to stipulation or contract, "it shall be understood," &c., are the words, as expressed in the quotation from that act. All the operation, then, which can be given to the provisions of the cession act, on the subject of these floating rights, is that of the stipulations of a treaty; and all the obligation resulting from those provisions, as well on behalf of the United States as of Tennessee, *was, that it should be honorably and in good faith executed. And this has been done: no more control has been exercised over those floating claims, than North Carolina might have exercised, and no obligation which North Carolina acknowledged with regard to those rights, has been violated.

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The injuries complained of are, that these floating rights have been restricted in their original range, so as not to be permitted now to be located to the westward of the line of demarcation, and that they have also been restricted to the eastward, by the stipulations of Tennessee, to make certain appropriations for schools. But this reasoning is founded upon two assumptions that cannot possibly be admitted, to wit: That North Carolina herself could not, if she had thought proper, have made these appropriations, before the act of cession, and that after the act of cession, the United States could not have set apart any portion of the unlocated land for specified pur-

poses; or, in fact, have issued any grants or warrants for unappropriated land, until these floating claims had finally found a place of rest, after landing and embarking again a hundred times. It would have been nugatory, under such circumstances, to have made a cession of territory. These claims were not forgotten; Tennessee stipulates to make provision for them on her side of the line, and the United States to make provision on the other side, if Tennessee cannot satisfy them: so that the whole country is, in fact, open to the holders of these rights; but they are only, in the first instance, directed to a particular tract of country, to make their selection.

*With regard to the objection, that the appropriation of these lands was made to a single state, when they were expressly given for [*540 the use of the United States, including North Carolina, there is certainly nothing in it; for the erection of a state may have appeared to congres the most beneficial general purpose to which those lands could be appropriated; nor can the prohibition to locate warrants on the Cherokee lands be objected to, when it is considered, that it was actually illegal, under the laws of North Carolina; and the stipulation is expressly made in subservience to the laws of that state.

Upon the whole, we are decidedly of opinion, that the state of North Carolina has parted with the power to issue this grant, and could not resume it. But although we must decide against the action of the plaintiff in this case, because it rests upon that grant, it must not be inferred, that we think unfavorably of his right to the land. On the contrary, we have no doubt, so far as appears in this record, of the obligation on the United States to make provision for issuing a grant in his favor; and in the meantime, the courts of the United States are not without resources, in their equity jurisdiction, to afford him relief.

Judgment affirmed.

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*Murray's Lessee *v.* Baker *et al.* [*541

Statute of limitations.

The terms "beyond seas," in the proviso or saving clause of a statute of limitations, are equivalent to without the limits of the state where the statute is enacted; and the party who is without those limits, is entitled to the benefit of the exception.[1]

This was an action of ejectment, brought by the plaintiff in error, in the Circuit Court for the district of Georgia, to recover the possession of certain the lands lying in that state. At the trial, a special verdict was found as follows:

"We find, that the lessors of the plaintiff have not been in the state of Georgia, since the defendants, or their ancestors, came into possession of the premises sued for. We further find, that the ancestor of the defendants possessed the land, from about the year 1791 until his death, which happened about February last, and that the defendant, his children, and legal representatives, have been in possession thereof from that time. If the court are of opinion, that the case of the plaintiffs is excepted from the operation

[1] Shelby *v.* Guy, 11 Wheat. 361; Bank of Alexandria *v.* Dyer, 14 Pet. 141; Davie *v.* Briggs, 97 U. S. 628; Peck *v.* Tease, 5 McLean 486; Ferris *v.* Williams, 1 Cr. C.C. 475; Lee *v.* Cassin, 2 Id. 112.