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.

of the act of limitations of this state, passed the 21st day of March 1767, then we find for the plaintiffs, with ten cents damages; but if the court are of a contrary opinion, then we find for the defendants.

The judges of the court below divided on a motion that judgment should be entered up for the plaintiffs *on this verdict, and the question was *542] thereupon certified to this court. The statute of limitations in question is as follows:

"Be it enacted, &c., that all writs of *formedon in descender*, *remainder and reverter* of any lands, &c., or any other writ, suit or action whatsoever, hereafter to be sued or brought, by occasion or means of any title heretofore accrued, happened or fallen, or which may hereafter descend, happen or fall, shall be sued or taken within seven years next after the passing of this act, or after the title and cause of action shall or may descend or accrue to the same, and at no time after the said seven years. And that no person or persons that now hath or have any right or title of entry into any lands, &c., shall, at any time hereafter, make any entry, but within seven years next after the passing of this act, or after his or their right or title shall or may descend or accrue to the same; and in default thereof, such person so not entering, and his heirs, shall be utterly excluded and disabled from such entry after to be made. Provided, nevertheless, that if any person or persons that is or shall be entitled to such writ or writs, or that hath or shall have such right or title of entry, be, or shall be, at the time of such right or title first descended, accrued, come or fallen, within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond seas, that then such person or persons, and his and their heir and heirs, shall or may, notwithstanding the said seven years are expired, bring his, her or their action, or make his, her or their entry, *as he, she or they might *543] have done, before this act; so as such person or persons, or his, her or their heir and heirs, shall, within three years next after his, her or their full age, discoverture, coming of sound mind, enlargement out of prison, or returning from beyond seas, take benefit of, and sue for the same, and at no time after the said three years."

March 1st. *Berrien*, for the plaintiff, argued, that the term "beyond seas," in the statute of limitations, was not to be construed literally, according to its geographical import, but liberally, and with reference to the protection which this clause of the statute was intended to afford. "Beyond seas, and out of the state, are analogous expressions, and must have the same construction." *Law* v. *Roberdeau*, 3 Cranch 174, 177, *per* MARSHALL, Ch. J. The expression "beyond seas," has been borrowed from a corresponding statute in Great Britain, where it has a local or geographical aptitude, which it does not possess here. The phraseology of the English statutes has been modified, to adapt it to the varying circumstances of that nation. Anterior to the accession of the first James, the northern part of the island was held by Scotland, in distinct sovereignty, and in this state of things, the expression "beyond seas" would have been inapt. A resident of Scotland, though that country was then foreign to England, would not have been within the proviso of the statute. Accordingly, we find, that the corresponding expression in the statutes passed anterior to *this period, *544] is, "out of the realm." And Mr Justice WILMOT, in pronouncing his

opinion in the case of the *King* v. *Walker*, 1 W. Black. 286, observes, that "the legislature, by altering the phraseology of the statute, from 'out of the realm' to 'beyond seas' at this precise period, seems to have pointed to the case of a dwelling in Scotland." During the war of our revolution, the British army was in possession of part of the state of New York. It has been held there, that the maker of a promissory note, who was within the British lines, during such occupancy, and departed with the British army, at the close of the war, was out of the state, during that time, and therefore, not entitled to plead the statute in bar; and that the cause of action accrued only upon his coming into the state after the peace. "The party was out of the jurisdiction of the state; he was *quasi* out of the realm; he was, where the authority which was exercised, was derived, not from the state, but from the king of Great Britain, by right of conquest." *Sleght* v. *Kane*, 1 Johns. Cas. 76, 81. So, in this case, the plaintiffs were never within the jurisdiction of the state: and if, in the language of the Chief Justice, first cited, beyond seas, and out of the state, are analogous expressions, they are entitled to bring their action, at any time within three years after coming into the state. The opposite construction would involve the absurdity of refusing the protection of the statute to a person living in Chili, because access can be had to that remote country by land; whilst it is extended *to a person residing in the neighboring West India islands, because the seas must be passed in order to reach the latter. [*545

No counsel appeared to argue the cause on the other side.

March 9th, 1818. JOHNSON, Justice, delivered the opinion of the court.—This is an action of ejectment. The defence set up is the act of limitations of the state of Georgia. The only question which the case presents is, whether the plaintiff, who resided in Virginia, comes within the exception in the act in favor of persons "beyond seas?" On this question, the court are unanimously of opinion, that to give a sensible construction to that act, the words "beyond seas" must be held to be equivalent to "without the limits of the state," and order this opinion to be certified to the circuit court of the district of Georgia.

Certificate for the plaintiff.