tured, and taken away by the superior force of a foreign power, so as to prevent the relanding, it is lost, within the meaning of the statute, by an unavoidable accident, although the owner may have received a compensation for it.

JOHNSON, J.—I agree with the court, in the result of the opinion, but not altogether upon the grounds stated by the Chief Justice. If the act in question will admit of two constructions, that should be adopted, which is most consonant with the general principles of reason and justice. I cannot suppose, that the legislature meant to do an unjust or an unreasonable act. No man can be bound to do impossibilities. The legislature must be understood to mean, that the party should be excused, by showing the occurrence of such circumstances as rendered it impossible to perform the condition of the bond. To make his liability depend upon the mere point of ultimate loss or gain, would be unreasonable in the extreme.

LIVINGSTON, J.—I concur in the reversal of these judgments, but not in the construction which the Chief Justice puts upon the third section of the act of March 1808.

If the relanding of the cargo in the United States had been prevented by any unavoidable accident whatever, although the goods themselves were not lost, it would, in my opinion, have furnished a good defence to this suit. If the Spanish government had forced a sale of the property, and the proceeds had actually come to the hands of the owners, it would have made no difference. Loss by sea is one excuse; unavoidable accident, whether followed by loss, or not, is another.

*324] *WASHINGTON and TODD, Justices, agreed in opinion with Judge Livingston.

Judgment reversed.

TYLER and others *v.* TUEL.

Patents.

An assignee of part of a patent-right cannot maintain an action on the case, for a violation of the patent.[1]

THIS was a case certified from the Circuit Court of the district of Vermont. Tyler and others sued as assignees of Benjamin Tyler, the original patentee of an improvement in grist-mills, which, he called the wry-fly, or side-wheel.

After a verdict for the plaintiffs, the judges of the court below, upon a motion in arrest of judgment, were divided in opinion upon the question, "whether the plaintiffs, by their own showing, are legal assignees to maintain this action?"

There were two counts in the declaration. The first set forth the substance of the statutes upon the subject of patents for useful discoveries, the facts necessary to entitle the patentee to a patent for his invention, and the patent itself, together with the specification, dated February 20th, 1800.

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[1] But he could sue in equity. Ogle *v.* Ege, 4 W. C. C. 584. The assignee of a sectional interest may sue at law, under the act of 1836.

The averment of the assignment of the patent-right to the plaintiffs was in these words: "And the plaintiffs further say, that the said Benjamin Tyler, afterwards, to wit, on the 15th day of May, in the year last aforesaid, at said Claremont, by his certain deed, of that date, by him signed, sealed, and to the plaintiffs, then and there, by the said Benjamin delivered, and ready to be shown to the court, did, in consideration of the sum of $6000, to him, before that time, by the plaintiffs paid, grant, bargain, sell, assign *and set over to the plaintiffs, their executors, administrators and assigns, all the right, title and privilege in, unto and over the said [*325 improvement in the said patent described, and thereby vested in the said Benjamin, in any part of the United States, excepting in the counties of Chittenden, Addison, Rutland and Windham, in the state of Vermont."

The second count, omitting the recital of the statutes and of the patent, stated concisely the same facts. The averment of the assignment of the patent-right was as follows: "And the said Benjamin Tyler, afterwards, and before the expiration of the said fourteen years, to wit, at said Claremont, on the 15th day of May, in the year last aforesaid, by his certain deed, of that date, by him, then and there, signed, sealed, and to the plaintiffs delivered, assigned to the plaintiffs the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvement, in and throughout the United States, excepting in the counties of Chittenden, Addison, Rutland and Windham, in the state of Vermont, as fully and amply as by said letters-patent the said Benjamin Tyler was thereto entitled, and all his title and interest in and unto said improvement excepting as aforesaid."

Hubbard, for the defendant, contended, that the assignment, being of part of the patent-right only, was not such as would authorize the assignees to maintain an action on the statute. (1 U. S. Stat. 322, §§ 4, 5.) The fourth section of the act declares, "that it shall be lawful for any inventor, his executor or administrator, to assign the title and interest in the said invention at any time, and the assignee, having recorded the said assignment in the office of the secretary of state, shall thereafter stand in the place of the original inventor, both as to right and responsibility, and so the assignees of assigns to any degree." The fifth section provides, "that if any person shall make, devise and use, or sell the thing so invented, the *exclusive right of which shall, as aforesaid, have been secured to any person by patent, without the consent of the patentee, his executors, administrators or assigns first obtained in writing, every person so offending shall forfeit and pay to the patentee a sum that shall be at least equal to three times the price for which the patentee has usually sold or licensed to other persons the use of the said invention; which may be recovered in an action on the case founded on this act, in the circuit court of the United States, or any other court having competent jurisdiction." [*326

It is evident, from the whole purview of the statute, especially from the 4th, 5th, 6th and 10th sections, that no person can be considered as an assignee under the statute, who is not the assignee of the whole right of the original patentee.

Rodney, Attorney-General, contrà.—Upon a motion in arrest of judgment, if the judges are divided, the motion fails, and the judgment must be

entered of course. It must follow the verdict, unless sufficient cause be shown to the contrary. 1 Salk. 17; 1 Ld. Raym. 271; 3 Mod. 156.

If there can be no assignment but of the whole right, then the exception of particular counties is void; it being repugnant to the prior words and intention of the grant. So, if the jury find a fact inconsistent with a fact previously found, the latter fact shall be rejected. Cro. Car. 130; 3 East; 6 Bac. Abr. 381; Plowd. 564; 1 Bl. Com. 89; 2 Co. 83; 8 Ibid. 56; Dyer 351; 1 Co. 3; 1 Vent. 521; Cro. Eliz. 244. The whole passed, at law, by the deed of assignment. The exceptions are in the nature of equitable assignments.

On a subsequent day, THE COURT directed the following opinion to be
*327] certified to the circuit court for the district of Vermont, viz :—*It is the opinion of the court, that the plaintiffs, by their own showing, are not legal assignees to maintain this action, in their own names, and that the judgment of the circuit court be arrested.

The JULIANA.

The Schooner JULIANA *v.* UNITED STATES.

The ALLIGATOR.

The Ship ALLIGATOR *v.* UNITED STATES.

Embargo.

It was no offence against the embargo law, to take goods out of one vessel and put them into another, in the port of Baltimore, unless it were with an intent to export them.[1]

THESE were appeals from the sentence of the Circuit Court for the district of Maryland, affirming the sentence of the district court, which condemned the schooner Juliana, and the ship Alligator and cargo, for a supposed violation of the 3d section of the act of congress of the 9th of January 1808, entitled "an act supplementary to the act, entitled an act laying an embargo on all ships and vessels in the ports and harbors of the United States," by putting goods from the Juliana on board the Alligator.

The libel, in the case of the Juliana, stated, that on the first of January 1808, she, being a Swedish vessel, cleared from Baltimore for Port au Prince, having on board 100 barrels of herrings, which were on board when her master was notified of the embargo; that she proceeded on her voyage to her port of destination, but before she left Patapsco river, there were laden on board of her a comptete cargo of merchandise, foreign and domestic, with which she proceeded, in prosecution of her said voyage, until the 1st of January 1808, when she was arrested by the officer of the custom house of the port of Baltimore, and brought back; after which, and while she was in that port, viz., the 11th of January 1808, sundry goods, described in the libel, were taken and removed from the Juliana and put on board the Alligator,
*328] then lying in the port of *Baltimore, "contrary to the provisions of the statutes of the said United States, in such case made and provided, and with intent to violate the provisions of the said statutes, for which

[1] The Paulina, 7 Cr. 52.