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of the judges of the court of appeals of the state of Kentucky, issued under the act of the general assembly of that state, passed at their December session, in the year 1807.

The injunction issued in the cause by the state court, and the order reinstating that injunction, were duly notified to the clerk of the court below, and official copies of each lodged in his office. On the third day of the session of the court below, at its November term 1810, McKim, by his attorney, applied to the clerk of the court below for a writ of *habere facias possessionem* on the said judgment in ejectment, but the clerk refused to issue the writ, in consequence of the injunction and orders aforesaid; whereupon, McKim, by his counsel, moved the court below to instruct and order their clerk to issue a writ of *habere facias possessionem*, on the judgment of that court, the injunction and orders aforesaid notwithstanding. Upon this motion of the plaintiff, the opinions of the judges were opposed.

*281] The case was submitted by *Harper*, for the plaintiff, *without argument. There was no appearance for the defendant.

March 14th, 1812. All the judges being present, Todd, J., stated the opinion of the court to be, that the state court had no jurisdiction to enjoin a judgment of the circuit court of the United States; and that the court below should be ordered to issue the writ of *habere facias*.

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Administration account.

A final account settled by the administrator with the orphans' court, is not conclusive evidence in his favor, upon the issue of *devastavit vel non*.

ERROR to the Circuit Court for the district of Columbia, sitting in Washington.

This was an action of debt, brought at the instance and for the use of Thomas Corcoran, against Thomas Beatty, upon the administration bond of Mrs. Doyle, administratrix with the will annexed of Alexander Doyle. The defendant was one of her sureties in that bond.

The defendant, after *oyer*, pleaded a special performance of every item in the condition of the bond. To which the plaintiff replied a judgment *de bonis testatoris* obtained by him, in May 1799, against the administratrix, *feri facias* upon that judgment and a return of *nulla bona*. The replication also averred, that the administratrix had in her hands, at the time of the judgment, goods of her testator sufficient to satisfy the debt, but that she wasted them. The defendant took issue upon the *devastavit*.

Upon the trial of this issue, the defendant below took a bill of exception, which stated, that the plaintiff offered in evidence the record of the judgment in May 1799, against the administratrix, for \$357, and the *feri facias* returned *nulla bona*. And also the inventory which she had exhibited to the orphans' court of Montgomery county, in Maryland, in January 1795, *amounting to 3701*l.* 2*s.* 7*d.*, Maryland currency, of which *282] 200*l.* was stated in the inventory to be cash. Also an account of the

(a) March 13th, 1812. Present, all the judges.

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administratrix with the estate of her testator, rendered by her to the orphans' court, upon oath, on the 17th of August 1799, in which she charged herself with the sum of 1085*l.* in addition to the former inventory, making in the whole 4786*l.*, and claimed credit for sums paid to other creditors, whose claims were not entitled to preference, amounting to 3566*l.* ; leaving a balance still in her, hands of 1220*l.*, equal to \$3253 ; and also a second account rendered by her, upon oath, to the orphans' court, in November 1799, charging herself with a further sum of assets to the amount of 463*l.* 15*s.* 5*d.*, in addition to the former balance, and claiming credit for 1607*l.* 16*s.* 11*d.*, paid to sundry creditors not entitled to preference, and still leaving a balance of 76*l.* in her hands to be administered. The defendant then offered in evidence, a third account, rendered by the administratrix to the orphans' court, in 1801, in which she charged herself with the former balance of 76*l.*, and claimed allowance for payments and commissions to the amount of 123*l.*, leaving a balance in her favor of 47*l.* To this account, as well as to the two former, was annexed a certificate from the register of wills, that the administratrix made oath on the Holy Evangelists of Almighty God, that the account was just and true, as it stood stated, and that she had *bonâ fide* paid or secured to be paid, the several sums for which she claimed an allowance "which, after due examination, passed by order of court."

This account was offered as conclusive evidence for the defendant on the issue. But the court instructed the jury, that it was not conclusive evidence in favor of the defendant upon that issue ; and further, at the request of the plaintiff's counsel, instructed the jury, that the said record of the judgment, the inventory and the two accounts of the administratrix, offered in evidence on the part of the plaintiff, were conclusive evidence in his favor, to prove the *devastavit* on the part of the administratrix, to the amount of the plaintiff's claim : to which instructions of the court, the defendant excepted ; and the verdict and judgment being against him, he brought his writ of error.

**F. S. Key*, for the plaintiff in error.—The question is, whether the final settlement of the administration account is conclusive ? If ^[*283] the court has a power to pass such an account, if it be a court of competent jurisdiction, its sentence is conclusive upon every other court. The sentence of the ecclesiastical court is conclusive, in England, as to all matters within its jurisdiction. *Peake's Law of Ev.* 69, 76, 78 ; *Ambler* 760 ; 3 *T. R.* 125. The order of the court, settling the account, is a judicial, not a ministerial act.

Had the orphans' court power to settle and adjust the account ? By the act of assembly of Maryland, of February 1777, c. 8, which was in force at the time these letters of administration were granted, the orphans' courts had all the jurisdiction and authority which the commissary-general had before. By the act of 1715, c. 39, § 2, the commissary-general was to proceed according to the laws of England, and to hold his court once every two months. By the third section, he was to call all executors and administrators to exhibit inventories, within three months, and render accounts, within twelve months next after administration committed ; and to enforce obedience by attachment for contempt. By the 7th and 18th sections, he is to transmit an account of the distribution to the

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county courts. By the 27th section, there was an appeal to the governor from the sentence of the commissary-general. By the 34th section, the deputy-commissaries had power to pass, audit and allow all such accounts as should come before them "relating to dead men's estates," not exceeding 50*l.*, provided there were no controversy thereon; but if any person claiming any interest in such estates should object to any articles of the account, the deputy-commissary was to send it, with all papers, &c., to the commissary-general, "before *whom all parties are to appear and defend *284] their interest." By the 40th section, the prerogative court (which was the commissary-general's court) had like authority in enforcing obedience to its process, orders, interlocutory sentences and decrees, as the high court of chancery had.

By the act of 1718, c. 5, the person entitled to the residue of an estate may, after twelve months from the date of the letters of administration, sue "for such residuary part as shall appear to be due by such accounts as shall then be made up."

This jurisdiction over accounts appears also in the practice of the commissary's court, as stated in the Deputy Commissary's Guide, p. 45-49, which shows also that the settlement of the account by that court was always holden to be conclusive upon the county courts. In the Appendix, p. 198, is the form of a special commission to pass an account. It appears also, that all the vouchers are to be surrendered and filed, upon passing the account. This shows that it must be conclusive; for nothing could be more unjust, than to oblige a man to be always ready to account and to support his account, after taking from him all his vouchers.

DUVALL, J.—The account was only binding upon the representatives of the estate, the distributees; and they might still open it in the general court. But the creditors are no parties to the settlement of the account, and cannot be bound by it. There can be no doubt, that the judgment against the administratrix, the inventory and two first accounts were conclusive evidence of a *devastavit*.

MARSHALL, Ch. J.—I believe that is the law throughout the United States. The court is unanimously of opinion, that the settlement of the account by the orphans' court is not conclusive evidence for the defendant, upon the issue joined.

Judgment affirmed.

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*UNITED STATES v. JOHN TYLER.

Criminal law.—Verdict.

Upon an indictment for putting goods on board a carriage, with intent to transport them out of the United States, contrary to the act of 9th January 1809, the punishment of which offence is a fine of four times the value of the goods, it is not necessary that the jury should find the value of the goods.

This case having been submitted, without argument—

LIVINGSTON, J., delivered the opinion of the court, as follows:—The defendant was indicted under the act to enforce the embargo laws, passed the 9th January 1809, for loading on carriages, within the district of Ver-