security, of which he might, at any moment, avail himself, after making the most of the credit thus acquired.

Judgment reversed, and *venire facias de novo* awarded.

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*577] *Clark *et al. v.* Graham.

Execution of power.—Lex loci rei sitæ.—Deeds.—Parol exchange.

A power to convey lands must possess the same requisites, and observe the same solemnities, as are necessary in a deed directly conveying the lands.[1]

A title to lands can only by acquired and lost, according to the laws of the state in which they are situate.

The laws of Ohio require all deeds of land to be executed in the presence of two witnesses, and a deed executed in the presence of one witness only, is void.

A parol exchange of lands, or parol evidence that a conveyance should operate as an exchange, will not convey any estate or interest in lands.[2]

Error to the Circuit Court for the district of Ohio.

March 16th, 1821. Todd, Justice, delivered the opinion of the court in this cause, which was submitted without argument.

This is an action of ejectment, brought in the circuit court for the district of Ohio. At the trial, the plaintiff proved a title sufficient in law, *primâ facie*, to maintain the action. The controversy turned altogether upon the title set up by the defendants. That title was as follows: A letter of attorney, purporting to be executed by John Graham, bearing date the 23d of September 1805, authorizing Nathaniel Massie to sell all his estate, &c., in all his lands in Ohio. This power was executed in the presence of two witnesses, in Richmond, in Virginia, and was there acknowledged by Graham, before a notary-public. *Nathaniel Massie, by a deed dated the 7th day of June 1810, and executed by him in Ohio, in his own right, as well as attorney to John Graham, conveyed to one Jacob Smith, under whom the defendants claimed the land in controversy. This deed was executed in the presence of one witness only, and was duly acknowledged and recorded in the proper county in Ohio. The deed and letter of attorney, so executed and acknowledged, were offered in evidence by the defendants, and were rejected by the court, upon the ground, that they were not sufficient to convey lands, according to the laws of Ohio.

*578]

The defendants also offered in evidence, a deed from Jacob Smith and wife, to the said Graham, dated the 7th of March 1811, duly witnessed acknowledged and recorded, conveying a certain tract of land in Ohio, and offered further to prove, that the tract of land so conveyed was given in exchange for and in consideration of the lands conveyed by the deed first mentioned to Smith. This evidence also was rejected by the court. A bill of exceptions was taken to these proceedings, by the defendants; and the jury found a verdict for the plaintiff, upon which a judgment was entered for the plaintiff, and the present writ of error is brought by the defendants to revise that judgment.

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[1] Piatt *v.* McCullough, 1 McLean 69.

[2] Purcell *v.* Miner, 4 Wall. 513.

The principal question before this court is, whether the deed so executed by Massie was sufficient to convey lands, by the laws of Ohio. If not, it was properly rejected; if otherwise, the judgment should be reversed. Two objections have been taken to the *execution of this deed; first, that [*579 the power of attorney was not duly acknowledged, as every deed is required to be in Ohio, in order to convey lands; and if so, then the subsequent conveyance is void, for it is a general principle, that a power to convey lands must possess the same requisites, and observe the same solemnites, as are necessary in a deed directly conveying the lands. On this objection, which is apparently well founded, it is unnecessary to dwell, as another objection is fatal; that is, the deed of Massie was executed in the presence of one witness only, whereas, the law of Ohio requires all deeds for land to be executed in the presence of two witnesses. It is perfectly clear, that no title to lands can be acquired or passed, unless according to the laws of the state in which they are situate. The act of Ohio regulating the conveyance of lands, passed on the 14th of February 1805, provides, "that all deeds for the conveyance of lands, tenements and hereditaments, situate, lying and being within this state, shall be signed and sealed by the grantor, in the presence of two witnesses, who shall subscribe the said deed or conveyance, attesting the acknowledgment of the signing and sealing thereof; and if executed within this state, shall be acknowledged by the party or parties, or proven by the subscribing witnesses, before a judge of the court of common pleas, or a justice of the peace in any county in this state." Although there are no negative words in this clause, declaring all deeds for the conveyance of lands, executed in any other manner, to be void; yet this must be necessarily inferred from the *clause, in the absence of all words indicating [*580 a different legislative intent, and in point of fact, such is understood to be the uniform construction of the act in the courts of Ohio. The deed, then, in this case, not being executed according to the laws of the state, the evidence was properly rejected by the circuit court.

The remaining point, as to the rejection of the evidence of the deed from Smith to Graham, and the proof to show, that it was given in exchange for the land in controversy, has not been much relied on in this court. It is, indeed, too plain for argument, that if a deed, imperfectly executed, would not convey any estate or interest in the land, a parol exchange, or parol proof of an intention to convey the same in exchange, cannot be permitted to have any such effect.

Judgment affirmed, with costs.