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take unequally. Proceeding immediately to the two families of the Griffins it was natural, though not necessary, to express his wish that the children should take equally. But neither in this, nor in the preceding devise, does he mingle the children of the different families in one mass. He speaks of them severally, by families. We are, therefore, of opinion, that the children of Cyrus and John T. Griffin take by families, and that the property devised to them is to be divided into two equal parts, one moiety to be assigned to each family.

DECREE.—This cause came on to be heard, on the transcript of the record from the circuit court for the district of Kentucky, &c.: On consideration whereof, this court is of opinion, that the children of Cyrus and John T. Griffin took the property devised to them in the will of Francis Peart, deceased, by families: This court is, therefore, of opinion, that *380] the decree of the *circuit court is erroneous, inasmuch as it directs the said property to be divided among the said children *per capita*, and not *per stirpes*, and ought to be reversed; and this court doth so far reverse the same; and in all things else, it is affirmed. And the cause is remanded, to the said circuit court, that further proceedings may be had therein according to law.

DOE *ex dem.* PATTERSON v. WINN and others.

Land-law of Georgia.

In general, the validity of a patent for lands can only be impeached for causes anterior to its being issued, in a court of equity; but where the grant is absolutely void, as, where the state has no title, or the officer has no authority to issue the grant, the validity of the grant may be contested at law.

The laws of Georgia, in the year 1787, did not prohibit the issuing of a patent to any one person for more than 1000 acres of land; the proviso in the act of assembly of the 17th of February 1788, limiting the quantity to that number, is exclusively confined to head-rights.

CERTIFICATE of Division from the Circuit Court of Georgia.

February 24th, 1826. This cause was argued by *Berrien* and *Wilde*, for the plaintiff; and by *White*, for the defendant.

March 8th. THOMPSON, Justice, delivered the opinion of the court.—

*381] This case comes up from the circuit court for *the district of Georgia, and the question presented for decision appears by a certificate of division of opinion in that court, as to the admissibility of the grant offered in evidence on the part of the plaintiff.

The certificate states, that the plaintiff, to maintain his action, offered in evidence a patent, purporting to be a grant, in due form of law, from the state of Georgia to one Basil Jones, for 7300 acres of land, including the premises in question. And also, the warrant of survey upon which the said tract of land was laid off and surveyed, and the minutes of the court which granted the warrant. The defendant's counsel objected to the grant's going to the jury, affirming the same to be void in law, inasmuch as no grant could issue under the laws of the state for so great a number of acres as are comprised in the said grant. On which question so made the court was divided in opinion. The broad ground assumed in the objection is,

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that the patent was absolutely void, and not even *prima facie* evidence of title. The question, as stated, does not distinctly present to the court the point that was probably intended to be submitted. The objection alleges the patent to be void, because, by the laws of Georgia, no grant could issue for so great a number of acres as 7300, without stating the limitation as to the number of acres. But, from the argument, it is understood, that the limitation contended for on the part of the defendant, *is to 1000 acres, and that all grants for a greater quantity are absolutely void. [*382

How far it is within the province of a court of law to entertain inquiries tending to impeach a patent, is a question upon which conflicting opinions have been held; particularly in the different state courts in this country. By some, the patent is considered only *prima facie* evidence of title, and open to extrinsic evidence to impeach its validity. By others, that the defect must appear upon the face of the patent, to authorize a court of law to pronounce it invalid; and that unless the defect does so appear, the patent is only voidable, and recourse must be had to a court of chancery to vacate it. By others, it has been considered, that the powers of a court of law were not so broad as laid down in the former of these opinions, nor so limited as in the latter, but that a court of law may inquire, whether the patent was issued without authority, or against the prohibition of a statute, or whether the state had title to the land granted. It is unnecessary, if not improper, at this time, to enter into an examination which of these opinions is best founded in principle. For, so far as the question applies to the present case, it has been settled by this court in the case of *Polk's Lessee v. Wendell et al.*, 9 Cranch 87. In that part of the case to which I refer, the exceptions under consideration were for causes not apparent on the face of the patent; and the proposition stated for decision is, whether in any, and in what cases, it is allowable, in an action of ejectment, to impeach *a grant from the state, for causes anterior to its being issued. It is said, that the laws [*383 for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals, and also to protect the state from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are, in general, directory, and when all the proceedings are completed by a patent, issued by the authority of the state, a compliance with these rules is presupposed. That every pre-requisite has been performed, is an inference properly deducible, and which every man has a right to draw from the existence of the grant itself. It would be extremely unreasonable to avoid a grant in any court, for irregularities in the conduct of those who are appointed by the government to supervise the progressive course of a title, from its commencement to its consummation in a patent. But in order to guard against the conclusion that this doctrine would lead to, closing the door against all inquiry into any matter whatever, beyond the grant, for the purpose of avoiding it, the court adds, that the great principles of justice and of law would be violated, if there did not exist some tribunal to which an injured party might appeal, and in which the means by which an elder title was acquired might be examined, if it had been acquired by the violation of principles essential to the validity of a contract; but that a court of equity is the more eligible tribunal, in general, for these ques- [*384 tions, *and they ought to be excluded from a court of law. But the

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court say, there are cases in which a grant is absolutely void (or inoperative), as, where the state has no title to the thing granted, or where the officer had no authority to issue the grant. In such cases, the validity of the grant is necessarily examinable at law.

This doctrine was again recognised and sanctioned by this court, five years afterwards, when the same cause (5 Wheat. 293) was a second time under consideration ; and it is in coincidence with the rule settled in the supreme court of New York, in the case of *Jackson v. Lawton*, 10 Johns. 23. We may, therefore, assume as the settled doctrine of this court, that if a patent is absolutely void upon its face, or the issuing thereof was without authority, or was prohibited by statute, or the state had no title, it may be impeached collaterally in a court of law, in an action of ejectment. But in general, other objections and defects complained of must be put in issue, in a regular course of pleadings, on a direct proceeding to avoid the patent ; and we are not aware of any contrary rule prevailing in the state courts of Georgia. But so far as we have any information on the subject, the practice there is in accordance with the rule laid down by this court

The objection in this case to the admissibility of the grant in evidence, is, that it was issued without the authority of law, and in violation of certain statutes of the state of Georgia, which, it is alleged, prohibit the issuing *385] of a grant to *any one person for more than 1000 acres of land ; and if the statutes referred to will warrant this construction, the objection was well taken, and can be sustained in a court of law. And this leads to an examination of those statutes, as applicable to the grant in question.

The grant bears date on the 24th of May 1787, and is for 7300 acres of land, in the county of Franklin, described by metes and bounds, and referring to a plat of the same, thereunto annexed. No consideration is expressed in the grant, nor any designation of the nature of the rights which made up the quantity of land mentioned in the grant, but it is in the common form prescribed by statute. The proceedings of the court of Franklin county, on the application of Basil Jones, accompany the grant, by which it is ordered, that he have 7300 acres in lieu of part of old warrants of John Peter Wagner—bounty reserved. This shows that the aggregate quantity of land mentioned in the grant was made up of sundry old warrants, and affords also an inference of the existence of a practice of consolidating a number of warrants in one grant ; and there is nothing in the land laws of Georgia, prior to the year 1794, at variance with such a practice. The limitation as to quantity will be found to relate to warrants for head-rights, and not to grants ; and as warrants were transferrible, no objection existed to their being united in one grant.

The land law of Georgia is comprised under several statutes, passed at different periods, varying *and modifying the system, occasionally, as *386] policy required. But all being *in pari materia*, are to be looked to as one statute, in explaining their meaning and import. Under these laws, there were various ways in which persons became entitled to rights, and could obtain warrants for land ; such as head-rights, according to the number of a family ; bounties to soldiers and to citizens, and likewise for the encouragement of certain manufactures, &c. And for the purpose of ascertaining and determining whether applicants were entitled to warrants, a land court was instituted in each county, to receive applications for lands, and grant war-

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rants for surveys to such as should show themselves entitled to land, according to the provisions of the land laws. A county surveyor was required to be appointed by each county, who was authorized to lay out and survey to any person who should apply to him, the land for which a warrant had been obtained. And he was required to record, in an office to be kept for that purpose, all surveys by him made, so as to enable those who had any objections to make to the passing of the grant, to enter a *caveat*, which was to be tried by a jury of twelve men, sworn to try the matter according to law and equity. And under the act of July 17th, 1783 (Prince's Dig. 266, § 36), this was declared to be final and conclusive. An appeal was afterwards given to the governor and executive council (§ 56 of the Dig.), who were required and empowered to proceed to decide such *caveats*, in manner *and form as they should think most conducive to justice; and [*387 expressly declaring, that from their decision there should be no appeal. And this was the existing law at the time the grant in question issued. By a subsequent statute (Dig. § 83), the power of hearing and determining such appeals, and signing grants, was vested in the governor alone.

To permit an inquiry whether a warrant, obtained under such guards and checks, was authorized by law, would be opening the door to endless litigation, and against the spirit and policy of the land laws in general, as well as the letter of the statute, which provides for *caveats*, and which declares the ultimate decision thereon to be final and conclusive. If the validity of the warrants cannot be called in question, the issuing of the grant follows, as matter of course, and cannot be said to be without authority, unless the statute prohibits the issuing of a grant for more than 1000 acres of land.

The act relied upon on the part of the defendant, as containing such prohibition, is that of the 17th of February 1783 (Dig. § 32), and is to be found in the proviso to the first section. The enacting clause relates entirely to head-rights, and declares, that each master or head of a family, shall be allowed, as his own head-right, and without any other or further charges than the office and surveying fees, 200 acres; and shall also be permitted to purchase, at the rates therein specified, a further quantity, according to the number of head-rights in such family: *provided the quantity of land granted and sold to any one person shall not exceed 1000 acres, and [*388 that such person do live on and cultivate a part of the said land twelve months, before he shall be entitled to a grant for the same.

The word "granted" is said to be used here in its technical sense, as synonymous with patent, and to imply a general prohibition to issue a grant to any one person for more than 1000 acres. Admitting this to be the sense in which the term is used, the consequence would not follow that is contended for. The term is here used in the proviso; the office of which is, to limit and restrict the operation of the enacting clause. The enacting clause relates entirely to head-rights, and is without limitation as to quantity; that depended on the number of the family. The master or head of the family is allowed 200 acres as his own head-right, on paying office and surveying fees, and is permitted to purchase, at the rate therein mentioned, any further quantity, according to the number of head-rights in his family. The proviso, however, limits the quantity to 1000 acres; but the limitation is upon

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the subject-matter of the enacting clause, to wit, head-rights. The enacting clause speaks of two modes of acquiring these head-rights. One, a gratuity allowed to the head of the family; the other, a purchase; and the words granted and sold, as used in the proviso, may well be construed in reference to these two modes of acquiring land. And the proviso is equivalent to say-
 *389] ing, that no one person *shall be allowed, on his own head-right, and on the purchase of head-rights in his family, more than 1000 acres. But this does not prohibit him from purchasing other warrants, and including all in one grant, when it is issued.

That the word granted, as here used, has reference to the warrant or incipient step towards acquiring the title, and not to the consummation of it by grant, is evident, both from the subsequent part of the proviso, and from the use of the same word, as synonymous with warrant, in other parts of the land laws. By the proviso, the person to whom land is granted and sold, is required to live on, and cultivate a part of the said land twelve months, before he shall be entitled to a grant for the same. To give to the word granted, in the former part of the sentence, the same meaning as to the word grant in the latter part, would involve gross inconsistency. This construction is corroborated by the enacting clause in the third section of the same act, containing, substantially, a like provision, that every person applying for head-rights as aforesaid, shall, previous to his obtaining a grant for his land, or having it in his power to dispose of the same (otherwise than by will), settle and improve a part of such tract or tracts as he may obtain a warrant and survey of, &c. And in a subsequent act, passed the 23d of December 1789 (Dig. § 85), the very word granted is used as the act of the land court, whose authority extended only to the issuing of warrants, and not grants.
 *390] The enacting clause *gives to three or more justices of the peace, in their respective counties, the same powers that had been exercised by four justices, and an assistant justice, under a former act; provided that the said three or more justices shall each of them sign all warrants for land by them granted.

Other parts of these land-laws might be referred to to show that this word is not always used in a technical sense, as synonymous with patent. And that it is not so used in the proviso to the act of 1783, we think is very evident; and throughout all these laws, so far as we have been able to discover, whenever there is a limitation to 1000 acres, it is applicable to the warrant, and not to the grant.

It is clearly to be inferred, from various parts of these land laws, that warrants were transferrible. Thus, in one of the earliest acts passed on the subject, in the year 1777 (Dig. 261), it is provided, that all persons who have had lands ordered them, and have not taken out grants for the same, or sold their warrants or rights, or are either dead, or left the state, such person or persons as have bought such warrants, or rights and titles, and continued in this state, shall have such lands granted them, agreeably to such order or warrant so purchased. And, the prohibition afterwards, in the year 1794 (Dig. 280), to survey or renew transferred warrants, necessarily implies, that previous to that time, such transfers were sanctioned by the land laws; and if so, there could be no reason why a number of such
 *391] warrants should not be consolidated, and included under one grant, although the aggregate quantity might exceed 1000 acres. There

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might be very good reason for putting this limitation upon warrants for head-rights, as the settlement and improvement of the country might be thereby promoted.

That grants for more than 1000 acres were sanctioned, is evident from the act of the 23d of December 1789 (exemplification produced), fixing the fees of the officers of the state; by which the governor is allowed \$6 for signing a grant of land exceeding 1000 acres. So also, in the act to revise and amend the above act, passed the 18th of December 1792 (Dig. 173), the governor is allowed, on all grants above 1000 acres, at and after the rate of \$2 for every thousand acres therein contained. (Dig. 173.)

Upon the whole, therefore, without pursuing this examination further, we are satisfied, that, in the year 1787, when the grant in question was issued, the land laws of Georgia did not prohibit the issuing of a patent to any one person for more than a thousand acres; and that the grant offered on the trial is not, therefore, void in law, and should have been admitted in evidence.

CERTIFICATE.—This case came on, &c.: On consideration whereof, this court is of opinion, and directs it to be certified to the said circuit court, that the evidence offered in the court below *by the plaintiff, and to the competency of which objection was made, and upon which ques- [*392
tion the opinions of the judges of the said court were opposed, was competent evidence, on the part of the plaintiff, to sustain the issue on his part, &c.

UNITED STATES v. AMEDY.

State records.—Destroying vessels.

Under the act of the 26th of May 1790, c. 38, copies of the legislative acts of the several states, authenticated by having the seal of the state affixed thereto, are conclusive evidence of such acts, in the courts of other states, and of the Union. No other formality is required than the annexation of the seal; and in the absence of all contrary proof, it must be presumed to have been done by an officer having the custody thereof, and competent authority to do the act.

Under the crimes act of the 26th of March 1804, c. 393, § 2, on an indictment for destroying a vessel, with intent to prejudice the underwriters, it is sufficient to show the existence of an association actually carrying on the business of insurance, by whose known officers *de facto* the policy was executed, and to prejudice whom the vessel insured was destroyed; without proving the existence of a legal corporation authorized to insure, or a compliance on the part of such corporation, with the terms of its charter, or the validity of the policy of insurance.

The terms "any person or persons," in the act, extend to corporations and bodies politic, as well as to natural persons.

CERTIFICATE of Division from the Circuit Court of Virginia. The prisoner, John B. Amedy, was indicted in the circuit court of Virginia, under the act *of congress of the 26th of March 1804, c. 393, (a) for destroying [*393
a vessel, with intent to prejudice the underwriters, and after a verdict

(a) Which provides (§ 2.), "That if any person shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy, any ship or vessel, of which he is owner in part or in whole, or in anywise direct or procure the same to be done, with intent or design to prejudice any person or persons that hath underwritten, or shall underwrite, any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or of any other owner or owners of such ship or vessel,