full authority to interpose this claim, by the consent of the real owner; and the irregularity, if any, prejudices no adverse right, and interferes with no rule of justice.

The judgment of the district court must, therefore, be affirmed. But a certificate of probable cause of seizure will be *granted, as such probable cause is not denied to exist, and indeed, is apparent from the verdict of the first jury. [*551

This cause came on, &c.: On consideration whereof, it is considered and adjudged by this court, that there is no error in the judgment of the said district court of Louisiana in the premises, and that the same be and hereby is affirmed: And it is further ordered and adjudged, that there was a reasonable cause of seizure of the wines and premises set forth in the information, and that a certificate thereof be entered of record accordingly; and that the cause be remanded, with directions to the district court of Louisiana to make restitution to the claimants, and otherwise proceed in the premises, according to law.

---

*Robert Steele's Lessee, Plaintiff in error, *v.* Jesse Spencer and others, Defendants in error. [*552

Recording of deeds.—Erasures and interlineations.

A decree of the supreme court of Ohio, ordered that the patentee of a certain tract of land, should, within six months, make a deed, &c., with covenants of warranty, conveying a portion of the land held under a patent, to the complainants in that suit, and on the failure of A. to make the said deed, &c., "that then and in that case, the complainant shall hold, possess and enjoy the said portion of land, in as full and ample a manner, as if the same had been conveyed to him:" The decree of the supreme court of Ohio, by which a conveyance of lands is directed to be made, the decree being according to the laws of Ohio, vested in those to whom the deed was ordered to be made, such a legal title to the land to have been conveyed by the deed as would have been vested by a deed of equal date; and the registry act of Ohio applies as well to a title under such a decree, as it would do, if the party held under a *bonâ fide* deed of the same date with the patent of the land; and the decree gives a legal title as ample as a deed. p. 558.

The registry act of Ohio directs that all deeds made within the state shall be recorded within six months from the time of the actual execution thereof, and declares, that if any such deed shall not be recorded in the county where the land lies, within the limits allowed by the law, "the same shall be deemed fraudulent and void, against any subsequent purchaser for a valuable consideration, without notice of such deed." p. 559.

In the construction of the registry act of Ohio, the term "purchasers," is usually taken in its limited legal sense; it means, a complete purchaser; or, in other words, a purchaser clothed with a legal title. p. 559.

It is not necessary, that a deed made to the subsequent *bonâ fide* purchaser, without notice, shall be recorded, to give it operation against a prior unrecorded deed, as by the provisions of the registry acts, the prior deed is declared, in itself, absolutely void, as against such purchaser. p. 560.

Whether erasures and alterations in a deed are material, or not, is a question of law, to be decided by the court.[1] p. 590.

The construction of words belongs to the court, and the materiality of an alteration in a deed, is a question of construction. p. 561.

Error to the Circuit Court of Ohio. This was a writ of error to the circuit court of the United States for the district of Ohio, to reverse the

---

[1] See Burgwin *v.* Bishop, 91 Penn. St. 336.

judgment of that court, in favor of the defendant in error, in an action of ejectment, instituted by the plaintiff in error, to recover a tract of land in Perry county, in the state of Ohio.

The title claimed and exhibited by the plaintiff in the ejectment, was originally derived under a patent from the United States to Jesse Spencer, dated November 15th, 1811; who, with George Spencer and others, were the heirs-at-law of Thomas Spencer, deceased; and in order to show the title acquired by the patent, he offered in evidence a deed from Jesse Spencer, the patentee, and Catharine his wife, to William Steele, *purporting to bear
*553] date the 20th of January 1818; and which appeared on that day by the certificate on the deed, to have been acknowledged before a justice of the peace. "William Fulton, one of the subscribing witnesses, proved, that he attested the deed, in the office of Jesse Spencer, but could not state when; that William Steele was not present; that he knew nothing of the purchase of the land by William Steele from Jesse Spencer; and that he saw no more of the deed, until about one year ago, when Spencer and Steele were together, and Spencer produced the deed to see, if the witness would recognise his signature." Wherever the name of William Steele appeared, either in the body of the deed, or the label thereon, it manifestly appeared to have been written on an erasure, and with ink of a different color, as did the words "Ross" and "Ohio," in describing the place of residence of said Steele. The alterations on the face of the deed were not accounted for by any testimony. The deed was not recorded in the county where the land lies, or elsewhere. The plaintiff further offered in evidence a deed from William Steele, and Sarah his wife, to Robert Steele, the lessor of the plaintiff, bearing date the 7th of July, A. D. 1821. Also, the deposition of John Daragh, to prove the execution of said deed; which deed and the certificate and acknowledgment thereon, and also the deposition of John Daragh, were also not recorded.

The defendants in the ejectment were in possession of the land, and they claimed to hold it, under a decree of the supreme court of the state of Ohio, for Ross county, sitting in chancery, rendered on the 3d of January 1820, in a proceeding by a bill filed in Perry county, and, under advisement, in Ross county, by the heirs of Thomas Spencer, deceased, against Jesse Spencer and others, by which decree, Jesse Spencer was ordered to convey the land in controversy, to certain of the parties in the said bill, upon their full compliance with the terms and conditions stated in the said decree. The decree then proceeded as follows: "It is further ordered and decreed, that if the complainants shall, within the time specified, deposit and pay to the clerk of Perry county aforesaid, the several sums of money aforesaid, and interest thereon, as aforesaid, and the defendant, Jesse Spencer, shall fail to make out, execute and deliver to said clerk, a deed for nine-tenths of the land aforesaid, within the times aforesaid, in manner aforesaid, that then and in that case, the heirs-at-law aforesaid, to whom the land aforesaid is decreed to be conveyed, in manner aforesaid, shall hold, possess and enjoy nine-tenths of the half-section aforesaid, to them, their heirs and assigns for ever, in as full and ample a manner as though the same were conveyed to them by the said Jesse Spencer, defendant, in manner aforesaid." "It is
*554] further ordered, that Jesse Spencer, *the defendant, pay the costs of the suit, in seven months from the date of this decree; and if he fail

so to do, that then execution or executions issue in the same manner as executions issue on judgments at law. It is further ordered and decreed, that the bill, as to the other two defendants, to wit, William Spencer and James Spencer, is dismissed, without costs, and that the clerk of the supreme court for Ross county, enter this decree of record in the said supreme court of Ross county, and that he transmit a copy of this decree to the clerk of the supreme court of Perry county, it being in the same county from which this cause was removed here for decision, and that the same be entered of record in the supreme court of the said county of Perry, in the same manner as if the cause had been there heard and decreed. It is further ordered and decreed, that if the money is not paid and deposited in manner aforesaid, and within the time aforesaid, that then these complainants shall pay all the costs of the suit." The defendants also exhibited evidence of their having fully complied with all the requisites of the said decree, by the payment of the sum of $524, the amount decreed to be paid ; and also that the decree was duly recorded in the proper office for recording of deeds of the county of Perry, on the 24th July 1822.

After the evidence was closed, the court, on the motion of the counsel for the defendants, instructed the jury as follows : 1. That the decree of the supreme court of the state of Ohio, given in evidence in this cause by the defendants, vested in them such a legal title to the land in question, as would have been conveyed by deed of equal date from Jesse Spencer, the patentee, and that the registry act of Ohio applies as well to the title of the defendants under the said decree, as it would do if they held under a *bonâ fide* deed, of the same date, from the said patentee. 2. That if the elder deed be not recorded within the time specified by the registry act of Ohio, it is wholly void, as to subsequent *bonâ fide* purchasers, without notice of the existence of such deed. 3. That if the deed from Jesse Spencer to William Steele, was altered in a material part, after it was sealed, attested and acknowledged, such alterations absolutely avoid the deed, and it can convey no title to the lessor of the plaintiff.

The counsel of the defendant objected to those parts of the instructions contained in the first and second specifications. They submitted to this court the following points : 1. The court below erred in charging the jury, that the registry act of Ohio applies as well to the title of the defendants, *under the decree set forth in the bill of exceptions, as if they held under a *bonâ fide* deed of the same date. [*555

2. The court below erred in charging the jury, that if the deed from Jesse Spencer to William Steele, was altered in a material part, after it was sealed, attested, and acknowledged ; such alteration absolutely avoids the deed, and it can convey no title to the lessor of the plaintiff. Because— 1st. Such an alteration, if made without the consent of the grantee, would not avoid the deed, and divest the estate vested by the execution of the deed in the grantee. 2d. An alteration of the deed, made with the consent of the grantee, could not divest the estate conveyed by the deed, and revest the same in the grantee.

The case was argued by *Leonard*, for the plaintiff in error ; and by *Ewing*, for the defendants.

For the *plaintiff*, it was insisted, that the registry act of Ohio applies

exclusively to purchasers by deed, and does not include and protect those who hold in virtue of decrees in chancery. Under the statute regulating proceedings in chancery, a suit may be instituted to obtain a conveyance, either in the county in which the land is situated, or where the defendant may be found. The action, and the counts in the declaration, are *in rem vel personam*, and jurisdiction is acquired by the possession and control of the subject-matter, or of the person. As the registry act does not require decrees made in the courts of one county to be recorded in the county where the land is situate, neither does it extend its protection to purchasers under such decrees; or if it embraces other purchasers than those by deed, it protects all subsequent purchasers, and subsequent purchasers alone.

Those cannot be considered subsequent purchasers, who were, before the execution of unrecorded deeds, vested with equitable titles, which afterwards were enforced by suits in chancery. Such purchasers by decree, do not come within the mischief of the registry act. Such a construction would be forced and inconvenient; as the purchaser by deed, on recording his deed, or by giving notice, *pendente lite*, in chancery; and even after decree rendered, and before the expiration of the time limited for the execution of the conveyance, although after the lapse of six months; would bring his deed within the protection of the act, and defeat purchasers by decree. If the chancery suit had been instituted against Steele, as well as Spencer, the complainants could not have obtained a decree. A party might in this way obtain a good title, by his omission to embrace proper parties in his bill in equity. A defective title might thus be made good, during the progress of
*556] the suit, and indeed, a *title invalid at the rendition of the decree, valid in a month after—*vires acquirit eundo.*

This construction would make the statute penal; punishing the party for his *laches*, in omitting to record his deed, instead of simply a protection of the rights of others. All the mischief to be guarded against by the statute, was effected by the execution of the deed; and the omission seasonably to record the deed, could not injure one who had a good equitable title, which is subsequently enforced by a bill in equity.

It was also insisted, that the court erred in charging the jury, that a material alteration in the deed from Spencer to Steele, after its execution, could defeat the title thereby vested in Steele. It was apparent, on the plaintiff's bills of exception, the court erred in thus charging the jury, and the court could not look to the bill of exceptions of the defendants in error, for any purpose; or if they could, the error was not rectified by a comparison of the facts there stated with the charge. *Marshall* v. *Fisk*, 6 Mass. 32.

Ewing, for the defendants.—The registry act of Ohio protects subsequent *bonâ fide* purchasers against unregistered deeds. A party entitled under a decree of a court of chancery, is a purchaser, in the legal signification of the term, and is, therefore, within the letter of the statute. There can be no reason to except him from its operation; he is as much injured by the concealment of a prior deed, as any other purchaser. Whenever a party is entitled, in equity, to a specific performance of a contract; if the defendant had put it out of his power to perform it, it is important, that the fact should be made known to the party interested, that he may seek other and

more effectual relief. A purchaser under such a decree, is, therefore, within the spirit as well as the letter of the act.

The court did not err in charging the jury, that the defendant's title took effect from the date of the decree. Courts of equity, in Ohio, in settling the title to real property, proceed *in rem*, not *personam*. It is true, they direct the party to execute a deed, but they do not compel him by attachment, to do so. If he refuses, the decree operates a deed, and the *res sita* gives jurisdiction to the court. The decree of the court fixes the title to the property. The time allowed for the conveyance relates merely to the transfer of the evidences of title, and the possession and the deed, if made pursuant to the decree, relate to the date of the decree itself. If no deed be made, the title by the decree relates. Thus, if the party against whom a decree is rendered should die, or being a *feme sole*, should marry, before the period fixed for the *execution of a title; it is believed, that the decree would operate, without further proceeding, to vest the title. [*557

2. Deeds for the conveyance of real estate in Ohio, derive their validity solely from statutory provisions. No common law mode of transferring real estate (except by operation of law) is recognised. *Lindsley* v. *Coats*, 1 Ohio 243. Neither is the statute of uses, which in England gives validity to the deed of bargain and sale, in force in Ohio. Deeds, therefore, to be valid, must be executed according to the provisions of the statute of that state; and if they are deficient in any of the requisites pointed out by that statute, they create no legal title. That act (Ohio Laws, vol. 22, p. 218) requires the grantor to seal and acknowledge the deed, in the presence of two witnesses, who subscribe their names, and also his solemn acknowledgment before a judicial officer. The deed in question was not proved to have ever been executed, with all these formalities. But if, after this due execution, it were altered in a material part, no matter by whom, or with whose consent; it was no longer the same deed. *Pigot's Case*, 11 Co. 27.

Trimble, Justice, delivered the opinion of the court:—This writ of error is prosecuted to reverse a judgment of the circuit court for the district of Ohio, rendered in favor of the defendants, in an action of ejectment, instituted by the plaintiff in error against the defendants, in the court below, to recover a tract of land in Perry county.

On the trial of the general issue, which was joined between the parties, the plaintiff gave in evidence a patent from the president of the United States to Jesse Spencer, dated the 15th of November 1811, for the land in controversy; a deed of conveyance for the land, from Jesse Spencer to William Steele, purporting to bear date the 20th of January 1818, and also a deed from William Steele to Robert Steele, dated the 7th of July 1821, prior to the institution of the suit. It appeared, from a certificate on the deed from Jesse Spencer to William Steele, that it had been acknowledged, on the day of its date, before a justice of the peace; and it was attested by two subscribing witnesses. The deed from Jesse Spencer to Steele, had never been recorded, either in the county where the lands lie, or elsewhere. Wherever the name of William Steele appeared in the body of the deed, or in the label thereon, it appeared to have been written over an erasure, and with ink of a different color, as did the words "Ross" and "Ohio," in describing the

place of residence of Steele. This was unaccounted for, by any testimony in the cause.

*558] *The defendants gave in evidence, a record and decree of the supreme court of the state of Ohio, in a cause in which the heirs of Thomas Spencer and the defendants in this cause were complainants, and Jesse Spencer, the patentee of the land, was defendant. This decree was rendered by the supreme court, on the 3d of January 1820, while sitting in Ross county, having heard the cause in Perry county, where the suit was instituted, and where the land lies; and having held it under an advisement, as is the practice in Ohio, the decree was pronounced in the cause, at Ross county, and was certified from thence to Perry county, to be there entered on record in the suit, in the same manner as if rendered while the supreme court was sitting in Perry county; and it was so entered on record accordingly. The decree was also recorded in the office of the recorder of deeds, on the 24th of July 1822, in Perry county.

The decree, *inter alia*, ordered Jesse Spencer, the patentee of the land, "within six months from the date of the decree, to make out a deed, with covenants of general warranty, conveying to the complainants in that cause, and defendants in this, an undivided nine parts out of ten, or nine-tenths, of the tract of land in controversy; and to deposit said deed, duly executed, acknowledged and attested, with the clerk of the supreme court of the county of Perry, within the said term of six months; and by the clerk to be delivered to the complainants, upon their paying and depositing with the clerk, within the said term of six months, certain sums of money, with interest, as specified in the decree; and that, upon the failure of the said Jesse Spencer to make out and deposit a deed, as above directed, within the said term of six months; that then and in that case, the complainants shall hold, possess and enjoy nine-tenths of the said tract of land, in as full and ample a manner as if the same were conveyed to them by the said Jesse Spencer." The defendants paid and deposited with the clerk the money required by the decree, within the six months, and took his receipt for the same.

It appears by a bill of exceptions tendered by the plaintiff's counsel, that after the evidence was closed, the counsel of the defendants moved the court to instruct the jury: 1. That the decree of the supreme court of the state of Ohio, given in evidence by the defendants, vested in them such a legal title to the land in question, as would have been vested by a conveyance from Jesse Spencer, of equal date; and that the registry act of Ohio applies as well to the title of the defendants, under the said decree, as it would do, if they held under *bonâ fide* deed, of the same date, from the patentee.

*559] *2. That if the elder deed be not recorded within the time specified by the registry act of Ohio, it is wholly void as to subsequent *bonâ fide* purchasers, without notice of the existence of such deed. 3. That if the deed from Jesse Spencer to William Steele, was altered in a material point, after it was sealed, attested and acknowledged, such alteration absolutely avoids the deed; and it can convey no title to the lessor of the plaintiff: which instructions the court gave, and the plaintiff excepted.

The counsel for the plaintiff relies on the following points for a reversal of the judgment. 1. The court below erred in charging the jury, that the registry act of Ohio applies as well to the title of the defendants, under the

decree set forth in the bill of exceptions, as if they held under a *bonâ fide* deed of the same date. 2. That the court below erred in charging the jury, that if the deed from Jesse Spencer to William Steele was altered in a material part, after it was sealed, attested and acknowledged ; such alteration absolutely avoids the deed, and it can pass no title to the lessor of the plaintiff.

The propriety of the first instruction, given by the court to the jury, admits not of a doubt. The statute of Ohio, entitled "an act directing the mode of proceeding in chancery," declares, "that where a decree shall be made for a conveyance, release or acquittance, &c., and the party against whom the decree shall pass, shall not comply therewith by the time appointed, then such decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available, as if the conveyance, release or acquittance had been executed conformably to such decree." Land Laws of Ohio, p. 296. The registry act of Ohio directs, that all deeds made within the state, shall be recorded, "within six months from the actual time of signing and executing of such deeds ;" and declares, that if any such deed shall not be recorded, in the county where the land lies, within the time allowed by the act, "the same shall be deemed fraudulent against any subsequent *bonâ fide* purchaser, for valuable consideration, without notice of such deed."

In the construction of registry acts, the term "purchaser" is usually taken in its technical legal sense. It means a complete purchaser, or, in other words, a purchaser clothed with the legal title. The meaning of the statute is, that an unrecorded deed, shall, after the expiration of the time limited by the statute, be deemed fraudulent and void, as against all subsequent purchasers, who may have obtained the legal title, for valuable consideration, without notice. The case of the *defendants is then within the terms of the registry act. They obtained their decree, [*560 and paid the purchase-money directed by the decree, without notice ; and the decree had obtained, by operation of the statute, all the attributes of a perfect legal title.

The argument for the plaintiff on this branch of the case, was founded on a supposition, that, to bring the defendants' case within the terms of the registry act, it must be shown, that their title has been recorded, as a deed, and their title being not a deed, but a decree, it is insisted, they are not within the terms of the statute. This is a mistake. The plaintiff's deed not being recorded, the statute avoids it in terms, as against all subsequent purchasers for valuable consideration, without notice, whether their titles be recorded or not. If the defendants had held under a conveyance executed by Jesse Spencer, in obedience to the decree, their title deed, although not recorded, would, by the terms of the statute, prevail against the plaintiff's prior unrecorded deed. A deed not being recorded, avoids it as against subsequent, but not as against prior purchasers. By the laws of the state of Ohio, the decree obtained by the defendants clothes them with the legal title in as ample a manner as a deed. They are purchasers for valuable consideration, without notice ; and are, therefore, not only within the words, but also within the spirit and intention of the statute.

This reasoning has been indulged, upon a supposition that the title of the defendant has not been sufficiently recorded, which is not admitted.

The decree, which is their title, is of record in the chancery suit, in the proper county where the land lies, and it was recorded in the office of the recorder of deeds. Whether this last mode of recording the decree is usually practised in Ohio or not, we are not informed. But we suppose the defendants had done all they could do, to commit their title to record in the proper county.

The third instruction given by the court to the jury, which forms the second ground relied on by the plaintiff's counsel for a reversal of the judgment, cannot be sustained. Although the proposition may be true, that a material erasure or alteration in a deed, after its execution, may avoid the deed, yet, the instruction ought not to have been given in the terms used by the court. Whether erasures and alterations had been made in the deed or not, was a question of fact, proper to be referred to the jury; but whether the erasures and alterations were material or not, was a question of law which ought to have been decided by the court. The instruction given refers the question of materiality to the jury, as well as the fact of alteration and erasure.

*561] *If the name of William Steele was inserted in the deed as grantee, after its full execution and attestation, instead of the name of some other grantee, which was stricken out, no doubt, the alteration was very material, and nothing could in that case pass by the deed to William Steele, The two other alterations supposed, in the words "Ross" and "Ohio," in the description of the grantee's residence, may have been either material or immaterial, as, upon a sound construction of the whole instrument, they would or would not alter or change its operation and effect.

The court ought to have decided the question of materiality in each instance, leaving the fact of alteration to the jury for their decision. The instruction given, was calculated to mislead the jury, by impressing on them the belief that they were warranted in finding either of the supposed alterations to be material, however it may have been in point of law. The construction of deeds belongs to the province of the court; the materiality of an alteration in a deed, is a question of construction; and in this case, the court committed an error, by giving an instruction to the jury, which imposed on them a difficult question of construction, upon which the jury ought to have been enlightened by the decision of the court. The judgment of the circuit court must be reversed, and the cause remanded, with instructions to award a *venire facias de novo*.

Judgment reversed.