dence, that the abandonment had been revoked. The judgment must be affirmed.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the district of Columbia, holden in and for the county of Alexandria, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs, and damages at the rate of six per centum per annum.

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*147] *Samuel D. Harris, Marshal of the United States, for the District of Massachusetts, Plaintiff in error, *v.* James De Wolf, Jr., Defendant in error.

Effect of assignment.

The plaintiff in replevin, James De Wolf, claimed the merchandise under an assignment executed by George De Wolf and John Smith to him, in consideration of a large sum of money due by them to James De Wolf, and in consideration of advances to be made to them by him; the assignment transferred four vessels and their cargoes, three of which vessels were then at sea, and one in New York, ready to sail, the property of the assignors; the assignment was to be void on the payment to James De Wolf of the money due to him; and if it should not be paid, the assignee to enforce the pledge by process and arrest, in all countries or places whatsoever, and to sell the same for the payment of the amount due by them, the assignors, to George De Wolf; the merchandise for which this action of replevin was instituted, was part of the return-cargo of one of the vessels. The defendant, Harris, pleaded that the merchandise was not the property of the plaintiff, but of George De Wolf and John Smith, and justified the taking of the goods of the plaintiff, as marshal of the district of Massachusetts, by virtue of a writ of attachment sued out in the district court of the United States for the district of Massachusetts, in which suit, judgment was obtained against George De Wolf. On the trial, the plaintiff in the replevin proved the assignment, that large sums of money were due to him by George De Wolf and John Smith, that the goods were part of the property assigned, that he had used all proper means to take possession of the goods, but was prevented by the attachment issued by the United States; the defendant proved, that the goods were imported into the United States by De Wolf & Smith, and that at the time of the importation, they were indebted to the United States for duties which were due and unpaid, to an amount exceeding the value of the merchandise attached, and that the Octavia, one of the vessels assigned, with a cargo on board, ready for sea, was at New York at the time of the assignment; which ship was not delivered to James De Wolf, the assignee, nor were the bills of lading assigned, the cargoes on board the vessels being consigned to the masters for sales and returns.

In the case of Conard *v.* Atlantic Insurance Co., 1 Pet. 306, it was decided, that the non-delivery of a vessel assigned to secure or pay a *bonâ fide* debt, did not make the assignment absolutely void: this court is well satisfied with that opinion.

The deed of assignment conveyed to the assignee a right to the proceeds of the outward-bound cargoes on board the vessels assigned to James De Wolf.

The failure of George De Wolf to deliver to the assignee the copies of the bills of lading which were in his possession, did not leave the property subject to the attachment of creditors, who had no notice of the deed. It was held, in the case of Conard *v.* Atlantic Insurance Co., that such a transfer gives the assignee a right to take and hold those proceeds, against any person but the consignee of the cargo, or purchaser from the consignee, without notice.

*148] That the consignees of the merchandise were indebted to the United States on *duty bonds remaining due and unpaid at the time of the importation, did not, under the 62d section of the act of March 2d, 1799, make the merchandise, as to the United States, the property of the consignees, notwithstanding the assignment; and make the attachment of the United States for the debt due to them, sufficient to bar the action of replevin brought by the assignee.

De Wolf *v.* Harris, 4 Mason 515, affirmed.

Harris v. De Wolf.

ERROR to the Circuit Court of Massachusetts. In the circuit court, the defendant in error instituted an action of replevin, to recover a quantity of merchandise claimed by him under a special assignment executed to him by George De Wolf and John Smith, to secure debts *bonâ fide* due to him, and which merchandise had been seized by Samuel D. Harris, the defendant in the suit, as marshal of the United States, under executions issued at the suit of the United States against George De Wolf and John Smith, on judgments obtained against them for duties. The marshal claimed to hold the merchandise as subject to the executions; and the cause was tried in the circuit court, in December 1827, and a verdict, under the charge of the court, was given for the plaintiff. At the trial, the defendant prayed the court to give certain instructions to the jury, which the court refused to give; to which refusal the defendant excepted, and prosecuted this writ of error. These instructions appear in the opinion of the court. The case was submitted to the court, without argument, by the counsel.

MARSHALL, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment of the court of the United States for the first circuit and district of Massachusetts, in an action of replevin, claiming the restitution of twenty-three cases of silks which had been attached at the suit of the United States, against George De Wolf. The property was claimed by the plaintiff in replevin, under a deed dated on the 19th of November 1822, executed by George De Wolf and John Smith, in which they acknowledged themselves to be severally indebted to the said James *De Wolf, in large sums of money, and agreed, in consideration thereof, and in [*149 consideration of other advances to be made by the said James De Wolf, to convey, and did convey, to the said James De Wolf, the ship Octavia, then lying in the port of New York, nearly ready for sea, and the three brigs Quill, Arab and Friendship, then actually at sea, their tackle, &c., and the proceeds and investments of their cargoes, &c., which said vessels and cargoes were the property of the said George De Wolf and John Smith. To this conveyance, a condition was annexed, that it should be void, on the payment to James De Wolf of the money which should be due to him; on the failure to pay which, it should be lawful for the said James De Wolf, at any time or times, to enforce the pledge by process, and arrest of the premises, or any part thereof, in all courts or places whatsoever, and cause the same to be sold, and the proceeds to be applied in satisfaction of the moneys which might then be due from them, or either of them. The silks were part of the return-cargo of one of these vessels.

The defendant pleaded, that the said silks were not the property of the plaintiff, but of George De Wolf and Smith; and justified the taking thereof, as marshal of the district, by virtue of a writ of attachment sued out of the court of the United States for the said district, in which suit the United States obtained judgment against the said George De Wolf.

At the trial, the plaintiff proved his deed of assignment; that the silks were part of the proceeds of the cargoes of the ship Octavia and brig Arab; that he had used all proper means to take possession of them; and that they were attached by the defendant, as marshal, by virtue of process sued out by the United States. He also proved debts against George De Wolf and

John Smith, severally, on account of his advances for them, which were intended to be secured by the deed of assignment, to a very large amount.

The defendant proved, that the said silks were imported into the United States, consigned to George De Wolf and John Smith, and that at the time of the importation of said silks, said George De Wolf and John Smith were indebted to the United States in bonds given by them, respectively, for *duties which were then due and unpaid, to an amount much exceeding the value of the silks replevied. The defendant also proved, that at the time the deed of assignment was executed, the ship Octavia lay at New York, with her cargo on board, nearly ready for sea; but that possession was not delivered, nor were the bills of lading indorsed or delivered to the plaintiff. The cargoes were consigned to the several masters for sales and returns.

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Many other circumstances were given by the plaintiff in evidence, to show the fairness of the deed of assignment; which were met, on the part of the defendant, by other circumstances, on which he relied, to show that, in point of law, it was fraudulent. These do not affect the opinions given by the circuit court, to which exceptions were taken; and therefore, are not recited.

After the testimony was closed, the defendant's counsel moved the court, to instruct the jury, that the deed of assignment was fraudulent as to creditors, and void. This instruction the court refused to give; but left it to the jury to determine, upon all the evidence of the case, whether the said deed was executed with an intent to defraud or delay the creditors of the said George De Wolf and John Smith, and if so executed, then the same was fraudulent, and void as to such creditors.

As the whole question of fraud was submitted to the jury, it is incumbent on the plaintiff in error, if he would support this exception, to show some defect in the deed itself, which makes it absolutely void as to creditors, whatever may be the fairness of intent with which it was executed. He relies on the fact, that possession of the Octavia was not delivered, as making the deed of assignment absolutely void. This question was decided, upon full consideration, in the case of *Conard* v. *Atlantic Insurance Company*, 1 Pet. 386, and this court is well satisfied with that opinion.

The counsel for the defendant also prayed the court to instruct the jury, that although the deed of assignment might be valid, it could not transfer a right to the proceeds of the outward-bound cargoes; which instruction the court refused to give. *This question also is decided in the case of *Conard* v. *Atlantic Insurance Company*.

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The counsel for the plaintiff also moved the court to instruct the jury, that the failure of George De Wolf and John Smith to deliver to James De Wolf the copies of the bills of lading which were in their possession, severally, when the bills of lading were executed, leaves the property subject to the attachment of creditors who had no notice of the deed. This instruction the court refused to give. In the case of *Conard* v. *Atlantic Insurance Company*, the court determined, that a deed of assignment, such as was executed in this case, was capable of transferring the right to the proceeds of the outward cargo, as between the parties; of consequence, such transfer gives the assignee a right to take those proceeds and hold them against any person but the consignee of the cargo, or person who is a purchaser from the

consignee, without notice. These principles were settled in the case which have been already cited.

The counsel also moved the court to instruct the jury, that if the consignees of the said silks were, at the time, indebted to the United States, on duty bonds remaining due and unpaid, then, that by virtue of the 62d section of the act for the collection of duties, passed the 2d of March 1799, the said goods were, as to the United States, the goods of the said consignees, notwithstanding the said deed, and in the legal custody of the said collector; and that the attachment in favor of the United States was good and sufficient to bar the action. This instruction was refused. This question was considered and determined in the case of *Harris* v. *Dennie*, decided at this term. (3 Pet. 292.)

The questions raised in this cause have all been decided in this court as they were decided by the circuit court. There is no error in the opinions, to which exceptions have been taken; and the judgment of the circuit court is affirmed, with costs.

Judgment affirmed.

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*John Beaty, Plaintiff in error, *v.* The Lessee of A. Knowler and others, Defendant in error. [*152

Tax-sales.—Public statute.—Powers of corporation.

The defendant claimed the land in controversy under a tax-sale, which was made by a company incorporated by the legislature of Connecticut, in 1796, called "The proprietors of the half million of acres of land lying south of lake Erie," and incorporated by an act of the legislature of Ohio, passed on the 15th of April 1803, by the name of "The proprietors of the half million of acres of land lying south of lake Erie, called the sufferers' land." In 1806, the legislature of Ohio imposed a land-tax, and authorized the sale of the lands in the state for unpaid taxes giving minors the right to redeem within one year after the determination of their minority, this act was in force in 1808. In 1808, the directors of the company incorporated by the legislatures of Connecticut and Ohio, assessed two cents per acre on the lands of the company, for the payment of the tax laid by the state of Ohio, and authorized the sale of those lands on which the assessments were not paid; the lands purchased by the defendant were the property of minors, at the time of the sale, they having been sold to pay the said assessments, under the authority of the directors of the company: *Held*, that the sale of the land, under which the defendant claimed, was void.

The provisions in the act of incorporation of Ohio, that it should be considered a public act, must be regarded in courts, and its enactments noticed, without being specially pleaded, as would be necessary, if the act were private. p. 167.

That a corporation is strictly limited to the exercise of those powers which are specially conferred on it, will not be denied; the exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation. p. 168.

From a careful inspection of the whole act, it clearly appears, that the incorporation of the company was designed to enable the proprietors to accomplish specific objects, and that no more power was given than was considered necessary to attain those objects. p. 171.

The words, "all necessary expenses of the company," cannot be so construed to enlarge the power to tax, which is given for specific purposes; a tax by the state is not a necessary expense of the company, within the meaning of the act; such an expense can only result from the action of the company in the exercise of its corporate powers. p. 171.

The provision in the tenth section, "that the directors shall have power to do whatever shall appear to them to be necessary and proper to be done for the well ordering of the interests of the proprietors, not contrary to the laws of the state," was not intended to give unlimited power, but the exercise of a discretion within the scope of the authority conferred. p. 171.

Knowler *v.* Beaty, 1 McLean 41, affirmed.