right stand? A sale by Goold was perfectly consistent with the trust for her benefit; and considering the *bonâ fide* character of Potter's purchase, I can see no ground for granting her relief as against him. Notice of her equity, without fraud or collusion, can afford none; since notice of the right in her trustee to sell, must accompany it, or rather is a part of it. If the subject of inquiry, as it relates to Schuyler, is respecting the maintenance of Potter's bar, then he need not assert his possession as adverse to Schuyler; it is enough for his purpose, if adverse to Evans, or Evans and Goold; and that it might well be so held, although he claims under them, has been, as we have seen, distinctly and repeatedly laid down in this court. If it began to run against them, it continued for the necessary length of time. That one may hold adversely to him from whom he purchases, has long been settled both in this court and in the courts of the states of the United States; the fact of possession and the *quo animo*, being still the legal subjects of inquiry.

8. It has been argued, that whatever may be the rule, in ordinary cases, in this, the proof of notice was indispensable; since these lands were wild or waste lands, notoriously uninhabited; and mere possession of which was not enough to put the trustee or co-tenants upon their remedy. To this it may be answered, that for anything appearing in the bill of exceptions, the lands may not have been waste or wild; and the proof of Potter's entering immediately, and claiming to be sole and exclusive owner, would seem to repel the fact. But the true answer is the general one, which was before given on the subject of notice, that we know not, but proof of notice, or presumption of notice, may have been the grounds on which the jury found their verdict. As a proof of a "claiming to be sole and exclusive owner," it was an adequate and natural ground; and certainly, as a fact, may have been inferred from length of possession, and other circumstantial evidence, of the weight of which they must be the judges.

Judgment affirmed, with costs.

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*449] *The Mayor, Aldermen and Inhabitants of New Orleans, Appellants, *v.* The United States, Appellees.

Practice.

The parol evidence given on the hearing of a petition, in the district court of the United States for the eastern district of Louisiana, in the nature of an equity proceeding, should be reduced to writing, and appear in the record.

Appeal from the District Court for the Eastern District of Louisiana. In that court, the United States filed a petition, stating, that the mayor of the city of New Orleans, in pursuance of an ordinance of the city council, had advertised for sale, certain lots therein described; that by virtue of the treaty of cession, all vacant lots belonged to the United States; that those lots were vacant; that the city of New Orleans had never received any grant for them, "unless in virtue of the 3d section of the act of congress of the 3d of March 1807, entitled 'an act respecting claims to land in the territories of Orleans and Louisiana.'" which was denied: whereupon, and inasmuch as the said attempts of the said city council to sell the said lands as private property, was an evasion of, and trespass upon, the rightful dominion and

possession of the United States in the premises, they prayed that the defendants "may be cited to appear and answer this petition; and that in the meanwhile, they may be inhibited by injunction from persisting in the said attempt; and after due proceedings had, that it may be ordered, adjudged and decreed, that the said injunction be made perpetual; and your petitioner, in the name, and on the behalf aforesaid, *prays all other and further relief, that equity and the nature of the case may require." On this petition, an injunction was granted, issued and served, inhibiting the sale of the lots.

The defendants, by their amended answer, denied the right of the petitioners, and set up title in themselves. 1st. Under a royal cedule, granted by the king of Spain. 2d. Under an act of congress of the 3d March 1807. 3d. As alluvial soil, formed in front of the city, which, as they averred, was, by the laws of the land, the property of the city, without any grant; *and they prayed that the cause might be tried by a jury. [*450
The plaintiffs filed a general replication, not controverting the right demanded of a trial by jury.

The defendants, in support of their plea of title, filed and produced the following documents: 1. The royal cedule. 2. The law of the United States, granting 600 yards round the fortifications to the corporation. 3. Sundry plans, showing that the premises were contained within the boundaries of the land granted by those acts, and were, moreover, alluvial soil. They also examined witnesses, but their depositions were not taken in writing.

The judge, considering the cause as one of equity jurisdiction, proceeded to hear the cause, and decreed, that the injunction should be made perpetual. And as the oral testimony had not been reduced to writing, the judge, under the 19th section of the judiciary act, gave a statement of his recollection of the facts. From this decree, the defendants appealed.

Livingston, for the appellants; *Berrien*, Attorney-General, for the United States.

Among other causes of reversal, assigned by *Livingston*, was the following: That the court ought to have directed the depositions of the witnesses to have been taken in writing, and cannot now supply the defect by a statement from the judge's notes. Upon inspecting the record—

The Court, upon the principles laid down in *Conn* v. *Penn*, 3 Wheat. 424, ordered the decree to be reversed.

In the case of *Conn* v. *Penn* the court held, that in appeals from the circuit courts, in chancery cases, the parol testimony which is heard at the trial in the circuit court, ought to appear in the record.