circumstances of the present case. We allude to *Lee* v. *Levi*, 1 Car. & P. 553. In that case, the holder, after suit brought against the acceptor and the indorser, had taken a *cognovit* of the acceptor, for the amount of the bill, payable by instalments; and at the trial of the suit against the indorser, Lord Chief Justice ABBOTT thought, that this was a giving time, which discharged the indorser, and the jury found a verdict accordingly. That case afterwards came before the whole court for revision (6 Dow. & Ry. 475), and was then decided upon a mere collateral point, viz., that the defence, having arisen after suit brought against the indorser, should have been taken advantage of by special plea, and could not be given in evidence under the general issue; so that the ruling of the lord chief justice was not brought directly into judgment. It was not, however, in any measure overruled.

Upon the whole, we are of opinion, upon the ground of the agreement stated in the special verdict being a virtual discharge of the indorser, that the judgment of the circuit court ought to be affirmed, with costs.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Ohio, 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.

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*JAMES MCDONALD'S Heirs, Appellants, *v.* FREEMAN SMALLEY and others, Appellees. [*261

Land-law of Ohio.

The plaintiff's entry of land in Ohio was made in the name of a person who was dead at the time of the entry. This entry is a nullity in the state of Ohio.
Galt *v.* Galloway, 4 Pet. 332, re-affirmed.

APPEAL from the Circuit Court of Ohio.

This case was argued by *Vinton* and *Doddridge*, for the appellants; and by *Corwin* and *Bibb*, for the appellees.

MARSHALL, Ch. J., delivered the opinion of the court.—This suit was brought in the court of the United States for the seventh circuit and district of Ohio, to obtain a conveyance for land which the defendants hold by a senior patent, and which the plaintiffs claim under a prior entry. The bill was dismissed by the circuit court, and the plaintiffs have appealed to this court.

Serious doubts exist respecting the validity of the entry under which the claim has been made, and several points have been discussed at the bar. It is unnecessary to decide more than one of these questions, because that is decisive of the case. David Anderson, in whose name the entry under which the plaintiffs claim was made, was dead at the time. The entry, therefore, as was determined in *Galt* v. *Galloway*, 4 Pet. 332, 345, is, in the state of Ohio, a nullity. This being the foundation of the plaintiff's title, they must fail in their action. Counsel, at the bar, have endeavored to distinguish this case from that, by treating the entry as one made in the name of the wrong person, through the mistake of the surveyor. We do not think he is

sustained by the fact or the law of the case. The decree is affirmed, with costs.

Decree affirmed.

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*262] *John Conard, Marshal of the Eastern District of Pennsylvania—United States, Plaintiffs in error, *v.* Pacific Insurance Company of New York, Defendants.

Lien for duties.—Damages.

Conard *v.* Atlantic Insurance Company, 1 Pet. 386, re-affirmed.

The bringing up with the record of the proceedings in the circuit court, the charge of the court at large, is a practice which this court has often disapproved, and deems incorrect.

The case of Harris *v.* Dennie, 3 Pet. 292, decided no more than that no creditor of the importer could, by any attachment or process, take goods imported into the United States, upon their importation, out of the possession of the United States, until the lien of the United States for the duties accruing thereon was actually discharged, either by payment of the duties, or by giving security therefor, according to the requirements of the law on the part of the importer.

There is no doubt, that if the importer has the general right and property in the goods, that right draws after it a constructive possession, and the master of the ship is but a bailee, maintaining the possession for his benefit.

There is no pretence to say, that the property of the importer in the goods is divested by any possession subsequently taken by the United States, for the purpose of maintaining their lien for duties; that possession is not adverse to the title of the importer; and indeed, it may be properly deemed, not so much an exclusive, as a concurrent and mixed, possession, for the joint benefit of the importer and of the United States. It leaves the importer's right to the immediate possession perfect, the moment the lien for the duties is discharged; and if he tenders the duties, or the proper security therefor, and the collector refuses the delivery of the goods, it is a tortious conversion of the property, for which an action of trespass or trover will lie.

The case not being one which called for vindictive or exemplary damages, the circuit court charged the jury, that the plaintiffs were entitled to recover such damages as they had proved themselves entitled to, on account of the actual injury sustained by the seizure and detention of the goods; and in ascertaining what these damages were, the court directed them, that the plaintiffs had a right to recover the value of the goods (teas) at the time of the levy, with interest from the expiration of the usual credit on extensive sales. This was in conformity to the decisions of this court in the case of Conard *v.* Nicoll, 4 Pet. 291.

Pacific Insurance Co. *v.* Conard, Bald. 138, affirmed.

Error to the Circuit Court for the Eastern District of Pennsylvania. This was an action of trespass *de bonis asportatis*, brought by the Pacific Insurance Company of New York, against John Conard, marshal of the eastern district of Pennsylvania.

*263] *The plaintiffs declared in the common form of trespass, specifying the goods and chattels seized and taken by the defendant to wit, sundry packages of teas, of the value, altogether, of upwards of $60,000, and laying the damages at $120,000.

To this declaration, the defendant pleaded the general issue, and also pleaded specially: 1. That on the 1st of May 1828, the plaintiffs received $40,000, paid to them by the defendant, in full satisfaction of the trespasses and wrongs complained of. 2. That at the April sessions of the court, 1826, the plaintiffs impleaded him in a plea of trespass to the plaintiffs, damages $40,000, and on the 30th of April 1828, by judgment of the court, recovered the same, which is the same trespass complained of in this declaration, which judgment remains in full force; and afterwards, on the 30th of April 1828,