subject is a sound one; and was sanctioned by this court in the case above cited.

On the part of the defendant in error, it is contended, that the witness objected to was not the only witness in the case; and that her testimony was competent so far as it went. That the court were not called on to decide, whether the facts stated by the witness were sufficient in law to discharge the defendant from his responsibility; but whether they conduced to prove an imposition practised on him by the bank, which ought to discharge him. If the testimony of the witness impaired the obligation of the note, it was inadmissible, under the rule stated; and that this was the tendency of the evidence, appears from the facts stated, and the argument just noticed. In the case cited, of the *Bank of United States* v. *Dunn*, this court decided that Carr, who was an indorser after Dunn, was not competent to prove facts which would tend to discharge Dunn from the responsibility of his indorsement. And is it not clear, by the same rule, that, in the case under consideration, the maker of the note is equally incompetent to prove facts which tend to discharge the indorser? In both cases, the discharge of the indorser was urged, on the ground, that certain statements had been made by the officers of the bank, which induced the indorser to sign the paper, under a belief that by doing so he incurred no responsibility. As the ground already stated is clear, it is unnecessary to add, *in this case, as was stated by the court in the case of Dunn, that the officers of the bank had no authority, as agents of the bank, to bind it by the assurances which they gave. [*17

The judgment of the circuit court is reversed, and the cause remanded for further proceedings.

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 Columbia, holden in and for the county of Washington, 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 reversed; and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, according to law and justice, and in conformity to the opinion of this court.

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*James Erwin, Appellant, *v.* Hugh M. Blake, Appellee. [*18

Authority of attorney.

An attorney at law, in virtue of his general authority as such, is entitled to take out execution upon a judgment recovered by him for his client, and to procure a satisfaction thereof by a levy on lands, or otherwise, and to receive the money due on the execution; and thus to discharge the execution; and if the judgment-debtor has a right to redeem the property sold under the execution, within a particular period of time, by payment of the amount to the judgment-creditor, who has become the purchaser of the property, there is certainly strong reason to contend, that the attorney is implicitly authorized to receive the amount, and thus indirectly discharge the lien on the land; at least, if (as is asserted at the bar) this be the common course of practice in the state of Tennessee, it will furnish an unequivocal sanction for such an act.

Appeal from the Circuit Court of West Tennessee. In the circuit court, Hugh M. Blake, the appellee, filed a bill on the equity side of the court,

against James Erwin, the appellant, to enjoin further proceedings in an ejectment brought in that court, by Erwin, and to compel him to convey the legal title of the property described in the ejectment, according to the provisions of an act of the assembly of Tennessee, passed in 1830, which provides that "it shall and may be lawful for any debtor, whose interest in any real estate may be sold, under execution, at any time within two years after such sale, on payment or tender thereof to the purchaser or purchasers, or on payment or tender thereof to any one claiming under such purchase, the principal money bid at such sale, with ten per cent. interest per annum thereon, together with all such other lawful charges, if any there be, to redeem the interest that may have been sold; and upon payment or tender thereof as aforesaid, in such bank-notes as are receivable on executions, it shall be the duty of the then claimant, to reconvey said interest to said debtor, but at the cost and charge of such debtor."

The substance of the bill, answer and proofs, is stated in the decree of the circuit court, as follows:

"The complainant set forth in the bill, that he was a citizen of the state
*19] of Tennessee, and that on the 3d day of September *1824, he was seised and possessed, in his own right, of a tract of land, situate in Lincoln county, in said state, containing about 350 acres, bounded on the south by the land of Robert Case, on the north, by that of Robert Wilson, on the east, by the land of Joel Cummins, and the west, by the land of John Marr and John W. Blake; that on the said 3d day of September 1824, the same was sold by the proper officer, under an execution, founded on a decree of the chancery court, held at Columbia, rendered in favor of James Brittain, executor of the last will, &c., of Joseph Brittain, deceased, against complainant and others; that said James Brittain became the purchaser of said tract of land, at said sale, for the price of $162, and received the sheriff's deed therefor; that James Erwin, a citizen of the state of Louisiana, in the month of September 1823, obtained a judgment against complainant and others, sureties of one Brice M. Garner, for the sum of upwards of $1200; that on the 21st of August 1826, one John P. McConnell, having acquired an interest in said last-mentioned judgment, in pursuance of an arrangement with said James Erwin, and for the benefit of himself and said Erwin, redeemed said tract of land from said James Brittain, by advancing the purchase-money paid for the same by said Brittain, together with ten per cent. interest thereon, and offered to credit said judgment of said Erwin, against complainant, the sum of $1000, under the provisions of an act of assembly of the state of Tennessee, passed in the year 1820; and therefore, said James Brittain conveyed said tract of land to said Erwin. The bill further set forth, that the complainant, with a view to avail himself of the privilege of redeeming said tract of land from said Erwin, did, before the expiration of the term of two years from the date of said sheriff's sale, pay to James Fulton, the attorney and agent of said Erwin, $1276.70, including the amount advanced by said Erwin and McConnell to said Brittain; and also $1094.70 of the said judgment of said Erwin against complainant, leaving a balance due on said judgment of $223.55, which one Robert Dickson assumed to pay to said McConnell, who was interested in said judgment of said Erwin to the
*20] amount, as *complainant was informed and believed, said McConnell accepted said *assumpsit* in satisfaction of so much of said judgment.

The bill further charged, that said James Fulton was fully authorized to receive said money by said Erwin, on the application of complainant to redeem said land, and that McConnell was authorized and had a right to relieve complainant from the payment of so much of said judgment as said Dickson assumed to pay; that, nevertheless, he, said Erwin, had refused to reconvey said tract of land to complainant, although he had received said sum of money, paid to the said James Fulton, his agent, as said agent had informed complainant; but had commenced an action of ejectment in this honorable court to recover possession of the same. The bill prayed that complainant might be permitted to redeem said land, and that the legal title to the same might, by decree of the court, be divested out of the said James Erwin, and be vested in the complainant, and his heirs; and for further relief.

"The defendant admitted, in his answer, the purchase of the tract of land by Brittain, under execution, the day and year set forth in the bill, and for the price therein specified; that he had recovered a judgment against complainant, as set forth in the bill, and that McConnell had redeemed the land from James Brittain, as alleged by complainant, for his, the defendant's benefit, and that Brittain had conveyed the land to him. The defendant denied, that McConnell had any interest in the judgment obtained in the name of the defendant against complainant; but admitted, that he had sold the note, upon which said payment was founded, to McConnell; that he had received about $200 in part payment for the same, and that he had taken McConnell's note for the balance, upon which he had brought suit, and obtained a judgment, before September 1826, but alleged, that it was understood between him and McConnell, and before that time, that he, defendant, should have the benefit of the judgment against Garner and complainants, and, when paid, was to be in discharge of the judgment which defendant had obtained against McConnell. The defendant denied, that James Fulton, or any other person for him, was authorized to receive anything else than specie, or to make any arrangements in regard to the payment of the amount, necessary to be paid by complainant within two years from the *date of the sale of said land, than were implied in his instructions to the said Fulton, which he alleges were, that the whole sum should be paid in specie. Defendant denied, that he had received any money from said Blake, or any one else, in payment of his claim against said complainant, and insisted, that the provisions of the act of assembly had not been complied with, in such manner as to entitle complainant to redeem. [*21

"It appeared from the proofs in the cause, that, some short time before the 3d of September 1826, when it appeared the term had expired within which the complainant had a right to redeem the said tract of land, the defendant Erwin was in the county of Lincoln, where all the persons concerned, except himself, resided; and in the presence of Garner, the principal in the judgment recovered by Erwin against complainant, and who was also clerk of the county court of said county, directed James Fulton, Esq., who had been the attorney employed in prosecuting the suit, in which judgment had been obtained against complainant, to receive the money which might be tendered by complainant for the purpose of redeeming said tract of land, and if he thought it a case which was entitled to specie, to require the payment to be made in specie. It further appeared, that

Fulton, having business in another county, appointed one Francis Porterfield to attend to the business for him, in his absence, and instructed him to receive from complainant nothing but specie, or bank-notes at such a discount as would make them equivalent to specie. It also appeared, that Brice M. Garner was insolvent and unprincipled ; that a principal object of said Erwin in requesting Fulton to receive the money from complainant, was to prevent a fraudulent acknowledgment of payment of the redemption money by Garner, who, as clerk of the county court, had a right to receive it, in the absence of the creditor. For this reason, Fulton appeared to have been particular in his instructions to Porterfield, to prevent the payment of the money into the hands of Garner, and to see that he did not practice any fraud upon Erwin, in the county court. It further appeared, that, on the 2d day of September 1826, the complainant paid into the hands of Porterfield, under the instructions of Fulton, the sum of $900, the principal part thereof in specie, and the balance in such bank-notes, as made
*22] them equivalent to specie ; *that said Porterfield agreed to accept the promise or *assumpsit* of William Husbands, the sheriff of the county, for the payment of $300, in satisfaction of so much, and that J. P. McConnell agreed, that he would look to one R. Dickson for the $200, the amount to which he alleged he was entitled out of the judgment against complainant. Porterfield, at the same time, pledged himself, that Fulton, the lawyer and agent of Erwin, would sanction the arrangement, and that the complainant should sustain no injury in consequence of it. It appeared, that Fulton, the agent, did sanction what had been done by Porterfield, in his absence, and on the 7th day of September 1826, gave complainant a receipt, in the name of said Erwin, for the sum of $1276.76, and at the same time, recognised the right of said McConnell to control so much of said judgment as he claimed an interest in. It further appeared to the court, by the testimony of the witness present, that when Erwin requested Fulton to attend to the receipt of the redemption money, he had given him full authority to act for him, and that whatever he might do, would be acquiesced in. It also appeared, that Erwin, by his letter of the 8th of September 1826, to Fulton, written after he had been informed, by a letter from McConnell, of many of the most material particulars of the arrangement of the 2d of September, admitted the authority of Fulton to bind him by anything done under his, Fulton's, instructions or authority, or by any one appointed by him and acting under his instructions. It further appeared, that McConnell continued to have an interest in the judgment obtained against complainant, up to the 2d of September 1826 ; and that he had employed counsel, and had the management of the whole business, until the instructions were given to said Fulton by Erwin, a short time before the day on which the money was paid. It also appeared, that said Erwin had notice of the appointment of said Porterfield by Fulton, to act in the matter for him, before the 2d of September 1826, and that he did not object to his appointment. It did not appear, that the complainant had any notice of the instruction of Erwin to his agent, that nothing but specie would be received. The money received by Fulton appeared to
*23] have been paid over to the agent of Erwin, but it did not appear that Erwin *had ever received it. The balance of the amount he

had a right to demand, and for which Husbands became accountable, Erwin refused to receive."

The case was argued by *Hardin*, for the appellant; and by *Bell*, for the appellee.

Hardin contended, that the appellee had not complied with the requisites of the act of assembly; that he had instructed his attorney and agent to insist on the redemption money being paid in specie, and had never waived his right to be thus paid. If a waiver had taken place, it was without his authority, or that of any one who had a right to do so. He cited Sugden on Vendors, 175, 470, 472. The right to redeem, under the act of assembly, depends on conditions precedent, and must be strictly complied with. 2 Bl. Com. 111, 119.

As to the contract under which the debt arose, he said, it was made before the act of assembly authorizing the payment of debts on judgments in bank-notes was passed; and so far as the law affected such contracts, it had been decided to be unconstitutional, in Tennessee. But a part of a law may be unconstitutional, and a part not; and a party may avail himself of the part which is valid, and reject that which is void. The appellant had a right to insist on a full compliance with the act, as to redemption of the property sold under the execution, notwithstanding the unconstitutional provision as to bank-notes. The case is not like a forfeiture, but is one of an absolute sale, liable to be defeated by payment of the purchase-money, and this in money, not in bank-notes. The provision for redemption is by statute; and time was essential, and could not be dispensed with.

The whole question in the case turns on the power of Fulton, and the ratification of his acts by the appellant; he denied both, as claimed by the appellee.

Bell, for the appellee, argued, that Blake could not be called upon to pay specie. The money to redeem the land was, by the law of Tennessee, to be any money in which the *debt could be collected in bank-notes. If this part of the law was unconstitutional, the whole act was void; [*24 and there could be no right to redeem at all. The appellant must abide by the law in all its parts. The contract was not that payment should be made in specie; it was not such a contract; and the validity of the law of Tennessee, relative to payment in bank-notes, is not involved in this case; because, as Erwin claimed the benefit of the same, he was bound by all its provisions, and to accept his debt in bank-notes.

He also contended, that the evidence showed, that Fulton, the attorney of Erwin, had full authority from his principal to waive the demand of specie, and to delegate that authority to another, which he had done. Under this delegation, confirmed by Erwin, the arrangement by which the redemption took place was made and was ratified.

The deed from the sheriff is to be considered as a guarantee for the debt due on the judgment, and in the nature of a mortgage; and the right to redeem resting entirely on equitable principles, and time not being material, if compensation can be made for it, the case is with the appellee. It is not within the rule, that the condition must be performed, unless prevented by

absolute necessity. As to the powers of an attorney, he cited, 12 Ves. 282; as to equity jurisdiction, Martin 83.

Story, Justice, delivered the opinion of the court.—The principal question in the case is, whether the plaintiff, Blake, has entitled himself to a reconveyance of the land in controversy, against the judgment-creditor, Erwin; the same land having been sold upon execution, and being, by the laws of Tennessee, redeemable by the owner, at any time within two years after the sale; and that question turns upon this, whether the judgment has been, according to those laws, duly discharged, within two years, by the judgment-debtor. It is clear, from the evidence, that Fulton, as attorney of Erwin, did give a receipt discharging the whole of the claim under the judgment, amounting, on the last day, when the land was redeemable, to
*25] $1501.17; and if he either had an original authority so *to do, or his acts have since been confirmed by Erwin, then Blake is entitled to the relief sought by the bill.

It is material, in the first place, to state, that the original demand on which the judgment was rendered, was, before the suit was brought, assigned by Erwin to one McConnell; and that the suit was commenced and carried on through all its stages by Fulton, for and under the direction of McConnell, although in the name of Erwin; and the latter never interfered in the suit, until after the judgment had, by the redemption of Brittain's prior judgment, been levied, and fixed as a lien on the land. Now, it cannot be doubted, that if the assignment to McConnell was never rescinded, he alone had a right to control the judgment and the levy, and the subsequent proceedings as to the redemption by Blake. And in point of fact, he was not only conusant of, but party to, the arrangement made by Fulton with Blake, by which the judgment-claim against the land was discharged. Was then the assignment antecedently rescinded? Erwin, in his answer, affirms that it was, but the evidence in the cause does not support his averment; on the contrary, it is established by Erwin's own acknowledgment, in his letter of the 6th of September 1826, that McConnell continued to have an interest in it, until long after all these transactions; and McConnell, in his testimony, asserts his own claim in the most positive manner; so that, at most, the case cannot be judicially treated as one where there had been a total rescission of the assignment; but only subsequent negotiations, out of which other equities connected with it arose between the parties.

But, assuming that the assignment had been rescinded, still it is clear, that Erwin adopted the acts of McConnell in regard to the suit, and recognised Fulton as his attorney, in the conduct of it. He never repudiated him as his attorney, and never gave any notice to Blake that he had not as complete authority in the premises as any other attorney in the management of a suit at law. Now, it is not denied, that an attorney at law, in virtue of his general authority as such, is entitled to take out execution upon a judgment recovered by him for his client, and to procure a satisfaction thereof by a levy on lands or otherwise, and to receive the money due on the execution; and thus to discharge the execution. And if the judg-
*26] ment-debtor has a *right to redeem the property sold under the execution, within a particular period of time, by payment of the amount to the judgment-creditor who has become the purchaser of the property,

there is certainly strong reason to contend, that the attorney is impliedly authorized to receive the amount, and thus indirectly to discharge the lien on the land. At least, if (as is asserted at the bar) this be the common course of practice in the state of Tennessee, it will furnish an unequivocal sanction for such an act.

But it is not necessary, in the present case, to rely on this ground, if Erwin did, in fact, give an express general authority to Fulton to act in the premises, if he has since ratified the acts of Fulton in discharging the judgment. Some of the judges are of opinion, that the evidence in the case establishes that Erwin expressly delegated to Fulton general authority to act in the premises, and to receive the money due under the judgment, according to his own discretion ; and that the direction of Erwin to Fulton to demand the payment in specie, was not intended to operate as a positive restriction upon that discretion, but was merely a strong expression of the wishes of Erwin on the subject. Fulton, in his deposition, states, that Erwin "called upon Kincannon to bear witness, that he had appointed me his attorney in the business, and that I was authorized to receive the money upon the claim ; and that whatever I should do upon the subject, he would abide by." Kincannon fully confirms this statement, in his deposition ; and says "Mr. Erwin did call on me to bear witness, that Mr. Fulton was duly authorized to transact the whole business for him. From all that was said by Mr. Erwin, I did believe, that any course taken by Mr. Fulton would be sanctioned by him, and that he would be bound to all intents and purposes by his act." And he adds, in another place, "it was my understanding, and I thought from all that was said by Mr. Erwin, that it was so under stood by himself and all others present, that Mr. Fulton was fully authorized to act for Mr. Erwin in relation to the whole matter. Mr. Erwin did say, that he would ratify or sanction Mr. Fulton's acts, or words of that import." The conversation here detailed is a part of the same conversation between the parties, in which the direction was given by Erwin to Fulton to demand specie in payment ; and therefore, it *may properly be taken into consideration, as a qualification of that direction. [*27

Others of the judges are of opinion, that, taking the fair scope of the language of Erwin, in his letters to Fulton, after the transaction, it amounts to a ratification of the acts of Fulton. Thus, in his letter of the 8th of September 1826, written after McConnell (as it admits) had given him information of what had been done, he says, "this, of course, is not a compliance with the law, and I am induced to think, they cannot now have even a probable right to claim the land, as the deed is now in my name. They cannot claim any indulgence granted by any one except you and myself, no one else having authority to grant any, whatever you may (have) authorized others to do, in your absence, in accordance with my instructions, or yours, of course, will be adhered to by me ; but nothing more." Now, these expressions are very significant as to the extent of the original authority given to Fulton. They show that specie was not absolutely to be insisted upon, or payment at the time absolutely required ; for it is admitted, that indulgence might be granted by Fulton ; "no one else having authority to grant any." And as to the point of ratification, the language is still more direct, for it is declared, that whatever had been done in Fulton's absence, in accordance with his instructions, would be adhered to. Now, at this time,

Fulton had ratified all Porterfield's acts, and indeed, except as to the giving time for a small part of the money, Porterfield had not deviated from his original instructions. On the 9th of September, Fulton wrote to Erwin, giving him a full account of all the transactions, and why he had deviated "from the strict letter of his instructions." And he also sent to Erwin the $1305 received by him; and offered to pay him the remaining sum of $200 then due. In the reply of Erwin to this letter, on the 12th of September, he declines receiving the money, for reasons, which (he says) he will explain, when he has the pleasure to see Fulton; and adds, "my course I am sure, on explanation, will be satisfactory to you, Major Porterfield and to McConnell." But he nowhere in that letter expresses any disapprobation of the conduct of Fulton; and he does not attempt to qualify the language of his former letters, or to disavow the acts of Fulton as a breach of his
*28] *instructions. His object seems to have been, without returning the money to Fulton or to Blake, or doing any positive act, to retain the whole affair in its then state, that he might make use of any doubts as to his extinguishment of his claim, for his own advantage in other business. "The judgment" (says he) "is in my name, and I alone can control it. I am fully aware of the hold I now maintain over Garner, or rather over Blake's land, and I am determined to use it towards the security of my other claims." Under these circumstances, the evidence is deemed fairly to establish the conclusion, that the acts of Fulton were ratified by Erwin; and never were intended to be repudiated by him.

Upon these grounds, and for these reasons, it is the opinion of the court, that the plaintiff is entitled to the relief sought by his bill. But it ought not to be granted, except upon the terms, that all the money due at the time when the land was redeemed by the plaintiff, should be paid over to the debtor. The balance of $200 does not appear ever to have been paid by Dickson; and the $1305.17, for aught that appears in the record, is still in the hands of Talbert, and never has been received by Erwin. The decree of the circuit court, granting relief, must, therefore, be varied, so far as to make it dependent upon the payment of the whole $1505.17 to Erwin.

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 West Tennessee, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that upon the full payment by the said Blake, of the sum of $1505.17, due on the judgment of the said Erwin against the said Blake, as in the proceedings mentioned, or so much thereof as has not been already received by the said Erwin in satisfaction thereof—the said money to be paid to the said Erwin personally, or brought into the circuit court for his use—all the estate, right, title and interest in the said tract of land, in the proceedings mentioned, which was vested in the said Erwin by the deed executed to him by James Brittain, bearing date the 21st day of August
*29] *1826, in the proceedings mentioned, and under and in virtue of the judgment of the said Erwin, levied on the same, as in the same proceedings mentioned, ought to be, and hereby is, declared to be restored to, and revested in him, the said Blake, and his heirs and assigns, in the same manner as if the same tract of land had not been sold to satisfy the judgment of the said Brittain in the proceedings mentioned. And it is further

ordered, adjudged and decreed, that the said Erwin, upon the payment of the said money as aforesaid, do forthwith, by a suitable deed and conveyance, convey the same estate, right, title and interest in and to the same tract of land, to the said Blake and his heirs and assigns accordingly. And it is further ordered, adjudged and decreed, that upon the payment of the said money as aforesaid, all further proceedings in the action of ejectment, brought for the recovery of the said tract of land in the proceedings mentioned, be and the same are hereby perpetually stayed and enjoined; and that in the meantime, and until such payment, no further proceedings be had in the said action. And it is further ordered, adjudged and decreed, that the decree of the circuit court, so far as it differs from this decree, be and the same is hereby reversed, and that in all other respects, it be and is hereby affirmed; and that this cause be and the same is hereby remanded to the circuit court for further proceedings, to carry the present decree into effect.

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*Margaret Dick and others, Appellants, *v.* Stephen B. Balch [*30
and others.

Recording of deeds.

The acts of 1715 and of 1766, of Maryland, require that all conveyances of land shall be enrolled in the records of the same county where the lands, tenements and hereditaments conveyed by such deed or conveyance do lie, or in the provincial court, as the case may be, the courts of Maryland are understood to have decided, that copies of deeds thus enrolled may be given in evidence.

Copies of deeds that are not required to be enrolled, cannot be admitted in evidence; but deeds of bargain and sale are, by the laws of the state, required to be enrolled; and by the uniform tenor of the decisions of the courts of the state, exemplifications of records of deeds of bargain and sale are as good and competent evidence as the originals themselves.

A mortgage was executed and recorded in 1809, and the mortgagee took no measures to enforce the payment of the money due upon it until 1821; in the meantime, the property mortgaged was sold by the mortgagor, the mortgagee having given no notice to the purchaser of his lien. If the mortgagee never did assert any claim, or intimate its existence to the purchaser or her friends, he was not restrained from doing so, by having released it; but the mortgage deed was recorded, and this is considered in law, as notice to all the world, and dispenses with the necessity of personal notice to purchasers; a deed cannot with any propriety be said to be concealed, which is placed upon the public record, as required by law; nor can a previous conveyance and delivery of title deeds to a purchaser, be justly denominated collusion, because a subsequent incumbrance is taken on the same property. Common prudence would have directed the purchaser to search the records of the county, before she paid the purchase-money; had she done so, she would have found the deed on record. It is not in proof, that he has done any act to deceive or mislead her; he has been merely silent respecting a deed which was recorded as the law directs.

Beale's Executors *v.* Dick, 4 Cr. C. C. 18, affirmed.

Appeal from the Circuit Court of the district of Columbia, and county of Washington.

In the circuit court, a bill was filed to foreclose a mortgage, dated on the 4th of August 1809, and executed by John Peter to Thomas B. Beale, to secure the payment of three promissory notes for $1000 each, given by the mortgagor to the mortgagee. The original mortgage having become lost or mislaid, the complainants in the circuit court, gave in evidence a certified copy thereof, taken from the land records of the county of *Washington, in which office the said mortgage had been duly recorded. [*31