United States, but of John & Jacob Stouffer, who have become insolvent, having no separate property; and the partnership property is insufficient to satisfy the partnership creditors. It is a rule too well settled to be now called in question, that the interest of each partner in the partnership property, is his share in the surplus, after the partnership debts are paid; and that surplus only is liable for the separate debts of such partner. And this is the rule in the exchequer in England, with respect to debts due to the crown. In the case of *The King* v. *Sanderson*, 1 Wightwick 50, it was held, that upon an extent against one partner, the crown, like a separate private creditor, took the separate interest of the partner, subject to the partnership debts.

It has been a question very much ligitated in England, and in this country, both in the courts of law and equity, as to the manner in which the separate creditor of one partner was to avail himself of the share of such partner in the joint property of the firm, where the partnership is solvent. But whatever *course is adopted, it is the interest only of [*276
the separate partner that is taken, and always subject to the rights of the partnership creditors. 16 Johns. 106, and cases in note; 2 Johns. Ch. 548; 4 Ibid. 525. But that question does not arise here, as it is admitted, that the partnership property is insufficient to pay the partnership debts. We entertain no doubt, therefore, that the United States are not entitled to recover the $974.71. The judgment of the circuit court is accordingly affirmed.

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 Maryland, 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.

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*United States, Appellants, *v.* One hundred and twelve Casks [*277
of Sugar: Nathan Goodale, Claimant.

Entry of merchandise.

A seizure was made in the port of New Orleans, under the 67th section of the act of 1799, for the collection of duties (1 U. S. Stat. 677), which authorizes the collector, where he shall suspect a false and fraudulent entry to have been made of any goods, wares or merchandises, to cause an examination to be made, and if found to differ from the entry, the merchandise is declared to be forfeited, unless it shall be made to appear to the collector, or to the court in which a prosecution for the forfeiture shall be had, that such difference proceeded from accident or mistake, and not from an intention to defraud the revenue. After hearing the testimony offered in the cause, the court decreed and ordered, that the property seized be restored to the claimant, upon the payment of a duty of fifteen per cent. *ad valorem;* that the libel be dismissed, and that probable cause of seizure be certified of record; the United States appealed from this decree.

The court not being able to decide from the evidence sent up with the record, that the article, in point of fact, differs from the entry at the custom-house, affirmed the decree of the court below.

The denomination of merchandise, subject to the payment of duties, is to be understood in a commercial sense, although it may not be scientifically correct; all laws regulating the payment of duties are for practical application to commercial operations, and are to be understood

in a commercial sense; and it is to be presumed that congress so used and intended them to be understood.[1]

Appeal from the District Court for the Eastern District of Louisiana.

This case was presented to the court on printed statements and arguments, by *Butler*, Attorney-General, for the appellants.

Thompson, Justice, delivered the opinion of the court.—The sugars in question in this case were seized by the collector of the district of Mississippi, and libelled in the district court of the United States for the eastern district of Louisiana, under the allegation that they had been falsely entered at the custom-house of the port of New Orleans, as syrup; when, in fact, they were casks of sugar in a state of partial solution in water. The libel charges, that this entry was made by a false designation of the merchandise with an intent to defraud the revenue *of the United State, by subjecting the article to an *ad valorem* duty of fifteen per cent. only, instead of a specific duty of three cents and four cents per pound, if entered as sugars, which, as is alleged, they in fact were.

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The answer and claim of Goodale denies that the contents of the casks were sugar, or that they differ from the entry, or that the entry was made with intent to defraud the revenue.

After hearing the testimony offered in the cause, the court decreed and ordered, that the property seized be restored to the claimant, upon the payment of a duty of fifteen per cent. *ad valorem* thereupon, that the libel be dismissed, and that probable cause of seizure be certified of record. From this decree, the present appeal is taken.

The decision in this case turns entirely upon the question, whether, in point of fact, the merchandise was different from the denomination under which it was entered; that is, whether the article was sugar, and not syrup; and if not syrup, then whether such entry was made with intent to defraud the revenue. It is deemed unnecessary to go into a particular and detailed examination of the testimony on the trial. A number of witnesses were examined on both sides, for the purpose of ascertaining the character and denomination of the article in question. It was a pure question of fact, and the nature of the inquiry admitted of nothing more certain than an expression of opinion, and which resulted, as is generally the case in such inquiries, in a difference of opinion. In such cases, the court must be governed, in a great measure, by the character and intelligence of the witnesses, and the opportunities they have had of becoming acquainted with the subject upon which they are called upon to express an opinion; and the weight of the

[1] Elliott *v.* Swartwout, 10 Pet. 137; Curtis *v.* Martin, 3 How. 106; Maillard *v.* Lawrence, 16 Id. 251. See Jaffray *v.* Murphy, 19 Int. R. Rec. 143.

*opinion of a witness, and the influence it is to have upon the tribunal, whether court or jury, which is to decide upon it, will depend very much upon seeing and hearing the witness give his testimony. When, therefore, a case rests upon a mere question of fact, and especially, when that fact is to be ascertained by the uncertain evidence of opinion, the appellate court ought to place much reliance upon the decision of the court below, and not reverse a decree, unless it is very satisfactorily shown to be against the weight of evidence.

One of the witnesses examined on the part of the United States was a chemist, who had analyzed a portion of the article in question, and found it composed of nothing but sugar, dissolved in water, and was not syrup, according to his understanding; which, as he says, is prepared by pouring water on sugar, and boiling it to that consistency which prevents crystallization, and that to produce this effect, it is necessary to introduce other agents, such as the white of eggs, &c. With respect to this and all other testimony of this description, it is only necessary to observe, that the denomination of merchandise, subject to the payment of duties, is to be understood in a commercial sense, although it may not be scientifically correct. All laws regulating the payment of duties are for practical application to commercial operations, and are to be understood in a commercial, sense. And it is to be presumed that congress so used and intended them to be understood.

Two of the witnesses on the part of the United States, who were merchants, and had dealt largely in sugars, and apparently very competent judges on the subject, testified, that sugar dissolved in water is not considered syrup, in the sense generally used in common parlance, as an article of commerce. To make syrup, the sugar must be boiled and clarified. They say, that sugar barely dissolved in water is a new article, not known in common as an article of trade. Some other witnesses were examined on the part of the United States, who express an opinion, that this article is not syrup. Their situation and knowledge of the article, however, do not seem to qualify them to form a very satisfactory opinion on the subject. But none of these witnesses undertake to say, that the article could, with any propriety, be called sugar.

On the part of the claimant, a greater number of witnesses were examined, one of whom was a sugar-refiner, who says, that *speaking as a merchant and sugar-refiner, he should consider this article syrup. It [*280 cannot, he says, be called by ony other name. Several other merchants and dealers in sugar concur with him; some say, the basis of all syrup is sugar and water boiled together; that the different kinds of syrups are produced by putting into the sugar the different articles from which the syrup takes its name, such as orange, lemon, &c. Some call it natural syrup; others speak of it as an inferior kind of syrup; but all deny that it can, with any propriety, be called sugar. The district-attorney testifies, that when the seizure was made, it was supposed by the collector, to be the expressed juice of the cane, boiled to a certain consistency; that it was not then known, that it had been prepared by the dissolution of sugar with water. There is certainly very strong reason for suspecting that this was done for the purpose of evading the specific duty on sugar; especially, as it is admitted on the record, that the claimant has an establishment at Matanzas for preparing

sugar in this manner, for the purpose of shipment to New Orleans, to be made into refined sugar, at his establishment or refinery at that place. Yet we do not think, under the evidence in the cause, we, as an appellate court, ought to reverse the decree of the court below, and decree a forfeiture, especially, as we cannot say, from the evidence, that the article, in point of fact, differs from the entry at the custom-house. It is difficult to say, what is its true denomination; the witnesses speak of it as a new article, not known in trade; none call it sugar; all seem to think it may be called syrup, in some sense, though several think it is not such, according to the understanding of that article in trade and commerce. Upon the whole, we think the decree of the court below ought to be affirmed, and a certificate of probable cause of seizure be certified of record.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said district court in this cause be and the same is hereby affirmed, and that a certificate of probable cause of seizure be certified of record.

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*281] *Jacob Mumma, Plaintiff in error, *v.* The Potomac Company.

Dissolution of corporation.

The 13th section of the act of Virginia, of January 1824, incorporating the Chesapeake and Ohio Canal Company, declares, that upon such surrender and acceptance, "the charter of the Potomac Company shall be, and the same is hereby, vacated and annulled, and all the powers and rights thereby granted to the Potomac Company shall be vested in the company hereby incorporated." By this provision, the Potomac Company ceased to exist, and a *scire facias* on a judgment obtained against the company, before is was so determined, cannot be maintained.

There is no pretence to say, that a *scire facias* can be maintained, and a judgment had thereon, against a dead corporation, any more than against a dead man.

The dissolution of the corporation, under the acts of Virginia and Maryland (even supposing the act of confirmation of congress out of the way), cannot, in any just sense, be considered, within the clause of the constitution of the United States on this subject, an impairing of the obligation of the contracts of the company, by those states, any more than the death of a private person may be said to impair the obligation of his contracts. The obligation of those contracts survives; and the creditors may enforce their claims against any property belonging to the corporation, which has not passed into the hands of *bonâ fide* purchasers; but is still held in trust for the company, or for the stockholders thereof, at the time of its dissolution, in any mode permitted by the local laws.[1]

A corporation, by the very terms and nature of its political existence, is subject to dissolution, by a surrender of its corporate franchise, and by a forfeiture of them for wilful misuser and non-user; every creditor must be presumed to understand the nature and incidents of such a body

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[1] Upon general principles of law, a creditor of an insolvent corporation can pursue its assets into the hands of all persons, except *bonâ fide* creditors and purchasers. Curran *v.* Arkansas, 15 How. 304. Valid contracts made by a corporation survive even its dissolution by voluntary surrender or sale of its corporate franchises, and the creditors of the corporation, notwithstanding such surrender or sale, may still enforce their claims against the property of the corporation, as if no such sale had taken place. Mississippi and Missouri Railroad Co. *v.* Howard, 7 Wall. 410. Moneys derived from the sale and transfer of the franchises and capital stock of an incorporated company are the assets of the corporation, and, as such, constitute a fund for the payment of its debts. Seaman *v.* Kimball, 92 U. S. 367.