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George Deneale. It is understood to be settled in Virginia, that no judgment against the executors can bind the heirs, nor in any manner affect them. It could not be given in evidence against them.

If the defence set up by the defendants in the district court had rested on the presumption of payment, the *scire facias* against the executor would undoubtedly have accounted for the delay, and have rebutted that presumption; but the statute creates a positive bar to proceeding on any judgment on which execution has not issued, unless the plaintiff brings himself within one of the exceptions of the act. Proceedings against the personal representative is not one of those exceptions. We are, therefore, of opinion, that the demurrer to the replication ought to have been sustained, and the judgment must be reversed, and the cause remanded to the circuit court for the county of Alexandria, with directions to enter judgment on the demurrer to the replication of the plaintiffs, in favor of the defendants.

THIS cause came on to be heard, on the transcript of the record of the United States court for the district of Columbia, sitting in the county of Alexandria, and was argued by counsel: On consideration whereof, this court is of opinion, that there is error in the judgment rendered by the said court, in this, that the demurrer filed by the defendants in that court to the replication of the plaintiffs, filed to the plea of the statute of limitations, pleaded by the said defendants, was overruled, whereas, it ought to have been sustained. It is, therefore, considered by this court, that the said judgment be reversed and annulled, and the cause remanded to the said court of the United States for the district of Columbia, in the county of Alexandria, with directions to enter judgment on the said demurrer to the replication of the plaintiffs, in favor of the defendants in that court.

*THOMAS Boon's Heirs, Complainants, *v.* WILLIAM CHILES *et al.*, [*532
Defendants.

Parties in chancery.

T. Boon, a citizen and resident of Pennsylvania, filed a bill in the circuit court of Kentucky, against W. Chiles and others, praying that the defendant and such others of the defendants as might hold the legal title to certain lands, might be decreed to convey them to him, and for general relief.

The bill stated, that Reuben Searcy, being entitled to one moiety of a settlement and pre-emption right of 1400 acres of land, located in Licking, sold the same to William Hay, in September 1781, and executed a bond for a conveyance; in December following, Hay assigned this bond to George Boon, who, in April 1783, assigned it to the plaintiff; Hay, while he held the bond, obtained an assignment of the plat and certificate of survey, which he caused to be registered; and the patent was issued in his name, in 1785; in 1802, the plaintiff made a conditional sale of this land to Hezekiah Boon, but the conditions were not complied with, and the contract was considered by both parties as a nullity; yet, a certain William Chiles, and the said Hezekiah Boon and George Boon, fraudulently uniting the plaintiff's name with their own, without his consent or knowledge, filed a bill in chancery, praying that the heirs of Hay might be decreed to convey the legal title to the said William Chiles, who claimed the right of Searcy, through the plaintiff, under his pretended sale to Hezekiah Boon; a decree was obtained, under which a conveyance was made to Chiles, by a commissioner appointed by the court; the plaintiff averred his total ignorance of these transactions at the time, and disavowed them.

While this suit was depending, the decree of the Bourbon court was reversed in the court of appeals of the state, and the cause remanded to that court for further proceedings. The com-

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plainant died, and the suit was revived in the name of his heirs. The complainants amended their bill showing a reversal of the decree of Bourbon court, and making the heirs of Hay defendants, and praying a conveyance from them; their amended bill was in the record. They also filed an amended bill, making the heirs of George Boon parties, and stating that his heirs disclaimed all title to the property; one of them answered and disclaimed title. It is not stated, whether process was, or was not executed on the other heirs of George Boon. The defendant, William Chiles, in his answer stated, that there were other heirs of Hay than those mentioned in the bill and made defendants, who are not residents of Kentucky.

The circuit court of Kentucky were divided in opinion on two questions which were certified to this court as follows. 1st. This court being then divided, and the judges opposed in opinion as to the jurisdiction over the case, and unable, therefore, to render a decree on the merits, they resolve they adjourn that question to the supreme court: to wit, under all the circumstances

*533] appearing as above, can this court entertain cognisance of the case? *2d. The judges were also opposed in opinion on the point, whether the complainants were entitled to a decree, in the absence of any proof that the persons made defendants in the amended bill as heirs of George Boon, were, in fact, his heirs? Both of which points occurred, and became material in this case.

The question between the plaintiffs, and the defendant William Chiles, is within the jurisdiction of the circuit court for the district of Kentucky, and may be decided by that court, though Hay's heirs were not parties to the suit; that they were made parties, cannot oust the jurisdiction as between those who are properly before the court.

It is not intended to say, that where there are several heirs, some out of the jurisdiction of the court, a decree may not be made for a conveyance of their own shares, from those on whom process has been served; but it is not thought necessary to decide that question in this case as it is stated.

The principles settled in the answer to the first question, decide the second. George Boon's heirs are not necessary defendants; they can have no interest in the contest, nor is any decree asked against them. If they are made defendants, and the answer admits that they are heirs, as it admitted by the defendant who has answered, no further proof can be required; if they do not answer, and the process is executed, so that the bill is taken for confessed, no further proof is necessary; if the process be not executed they are not before the court.

CERTIFICATE of Division from the Circuit Court of Kentucky. The case was submitted to the court upon printed arguments, prepared by the counsel for the complainants and the defendants in the circuit court.

Flaggin, for the complainants; *Wickliffe* and *Depeau*, for the defendants.

MARSHALL, Ch. J., delivered the opinion of the court.—In this cause, the judges of the court for the seventh circuit and district of Kentucky, were divided in opinion on two questions, which were ordered to be certified to this court in the following manner. 1st. This court being then divided, and the judges opposed in opinion as to the jurisdiction over the case, and unable, therefore, to render a decree on the merits, they resolve to adjourn that question to the supreme court: to wit, under all the circumstances, appearing as above, can this court entertain cognisance of the case? 2d. The *534] judges were also opposed in opinion on the point, *whether the complainants were entitled to a decree, in the absence of any proof that the persons made defendants in the amended bill, as heirs of George Boon, were, in fact, his heirs? both of which points occurred, and became material in this case.

1. The first question adjourned to this court is, “under all the circumstances appearing as above, can this court (the circuit court for the district of Kentucky) entertain cognisance of the case? The circumstances mentioned above are, that Thomas Boon, a citizen and resident of Pennsylvania, filed a bill in that court, in January 1823, against William Chiles and others, citizens and residents in Kentucky, praying that the defendant, Chiles, or

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such other of the defendants as may hold the legal title, may be decreed to convey to him certain lands in the bill mentioned, and for general relief. The bill states, that Reuben Searcy, being entitled to one moiety of a settlement and pre-emption right of 1400 acres of land, located in Licking, sold the same to William Hay, in September 1781, and executed a bond for a conveyance. In December following, Hay assigned this bond to George Boon, who, in April 1783, assigned it to the plaintiff. Hay, while he held the bond, obtained an assignment of the plat and certificate of survey, which he caused to be registered; and the patent was issued in his name, in 1785. The bill states, that in 1802, the plaintiff made a conditional sale of this land to Hezekiah Boon, but the conditions were not complied with, and the contract was considered by both parties as a nullity. Yet, a certain William Chiles, and the said Hezekiah Boon and George Boon, fraudulently uniting the plaintiff's name with their own, without his consent or knowledge, filed a bill in chancery, praying that the heirs of Hay might be decreed to convey the legal title to the said William Chiles, who claimed the right of Searcy, through the plaintiff, under his pretended sale to Hezekiah Boon. A decree was obtained, under which a conveyance was made to Chiles, by a commissioner appointed by the court. The plaintiff avers his total ignorance of these transactions at the time, and disavows them. While this suit was depending, the decree of the Bourbon court ^{*}was reversed in the court of appeals of the state, and the cause remanded to that court for further proceedings. The complainant died, and the suit was revived in the name of his heirs. The case states, that the complainants amended their bill, showing a reversal of the decree of Bourbon court, and making the heirs of Hay defendants, and praying a conveyance from them. Their amended bill is not in the record. They also filed an amended bill, making the heirs of George Boon parties, and stating that his heirs disclaimed all title to the property. One of them answered and disclaimed title. It is not stated, whether process was, or was not, executed on the other heirs of George Boon. The defendant, William Chiles, in his answer, states, that there were other heirs of Hay than those mentioned in the bill and made defendants, who are not residents of Kentucky. Upon this statement, the court is required to say, whether the circuit court for the district of Kentucky can take cognisance of the case?

No controversy exists between the plaintiffs and William Chiles, respecting the title of Searcy, or his conveyance to Hay, or that of Hay to George Boon, or the conveyance of George Boon to Thomas Boon. Both claim under three several conveyances; both admit and assert their validity. Chiles contends, that Thomas Boon sold this equitable title to Hezekiah Boon, under whom he claims, which sale the plaintiffs deny. This, then, is the single point in issue between the parties. If the case is in such a situation as to enable the circuit court to take cognisance of this question, it has jurisdiction.

The bill states a contract between Thomas and Hezekiah Boon, for the sale of the property, which contract, it charges, became void by consent of parties; and that Chiles purchased from Hezekiah Boon, with full knowledge that it was void, and that the equitable title still remained in Thomas Boon. That, with this knowledge, he fraudulently filed a bill, in the name of himself and of the said Thomas, who was totally ignorant of the transaction,

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praying that the heirs of Hay might be decreed to convey to him. This decree was obtained, but has been since reversed.

*536] It is clear, that the heirs of Hay can have no interest in this *contest between the heirs of Thomas Boon and William Chiles, and need not be made parties, but for the purpose of obtaining a conveyance of the legal title, if it still remains in them. The court may very properly decree as between Boon's heirs and Chiles, although the heirs of Hay should not be parties. Chiles is in possession of a contract for the sale of Boon's equitable title, which Boon alleged to be totally invalid, and to have been fraudulently acquired. His heirs now allege it. Chiles maintains that the sale from Thomas to Hezekiah Boon was absolute and *bona fide*; and that the whole equitable interest of Thomas Boon is legally and justly vested in him. The heirs of Thomas Boon may certainly come into a court of equity, and ask its decree to compel William Chiles, to surrender this contract, if it has indeed become a nullity, or to enjoin him perpetually from the use of it, or to convey any legal title he may have acquired under color of it, to those who possess the real equitable right. Should the court be unable to decree against Hay's heirs, it may decree as between Boon's heirs and William Chiles, so far as respects the title of Chiles under Boon; if the bill be so framed as to enable the court to grant that relief.

The original bill, as has already been shown, charges that Chiles purchased from Hezekiah Boon, knowing that he had no equitable right, and fraudulently prosecuted that right in the name of Thomas Boon, without his consent or knowledge. It prays for a conveyance of the legal title from those who may possess it, and also prays for general relief. This last prayer entitles the plaintiffs to any relief which may be granted under his bill, and which is not inconsistent with the specific relief for which he asks. It must be admitted, that had the bill prayed specifically for a surrender of the contract under which Chiles claimed, the court might have decreed it, had the testimony justified such a decree; and it will be conceded, that this relief is not inconsistent with that for which the bill particularly prays.

We think, therefore, that the question between the plaintiffs, and the defendant William Chiles, is within the jurisdiction of the circuit court for the district of Kentucky, and may be decided by that court, though Hay's heirs were not parties to *the suit. That they were made parties, can-*537] not oust the jurisdiction as between those who are properly before the court.

It is not intended to say, that where there are several heirs, some out of the jurisdiction of the court, a decree may not be made for conveyance of their own shares, from those on whom process had been served: but it is not thought necessary to decide that question in this case as it is stated.

The principles settled in the answer to the first question decide the second. George Boon's heirs are not necessarily defendants. They can have no interest in the contest, nor is any decree asked against them. If they are made defendants, and the answer admits that they are heirs, as is admitted by the defendant who has answered, no further proof can be required. If they do not answer, and the process is executed, so that the bill is taken for confessed, no further proof is necessary. If the process be

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not executed, they are not before the court. We do not perceive that in this case, as stated, any proof respecting the heirs of George Boon ought to be required. The court directs the following certificate.

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 Kentucky, and on the questions and points on which the judges of the said court were opposed in opinion, and which was certified to this court for its opinion, agreeable to the act of congress in such case made and provided, and was argued by counsel: On consideration whereof, this court is of opinion, 1. That under the circumstances stated in the certificate of the judges, the said circuit court could entertain cognisance of the case. 2. That the want of proof that the persons made defendants in the amended bill as the heirs of George Boon, were in fact his heirs, is no obstruction to a decree on the merits of the cause. All of which is hereby ordered and adjudged to be certified to the said circuit court, under the seal of this court.

*The SHIP VIRGIN, and GRAF and DELPLAT, her owners, Appel- [*538
lants, *v.* ADAM VYFHIUS, JUNIOR, Appellee.

ADAM VYFHIUS, JUNIOR, Appellant, *v.* The SHIP VIRGIN, and GRAF and DELPLAT, her owners, Appellees

Bottomry.—Seamen's wages.

On an appeal from the decree of the circuit court of Maryland, on a libel on a bottomry bond originally filed in the district court, it appeared, that commissioners appointed by the circuit court had reported, that a certain sum, being a part of the amount of the bond, was absolutely necessary for the ship, as expenses and repairs in the common course of her employment; no exception was taken to this report by either party, in the circuit court, and it was accordingly confirmed by that court. The report is not open for revision in this court, there being nothing on its face impeaching its correctness.

It is no objection to a bottomry bond, that it was taken for a larger amount than that which could be properly the subject of such a loan; for a bottomry bond may be good in part, and bad in part; and it will be upheld by courts of admiralty, as a lien, to the extent to which it is valid, as such courts, in the exercise of their jurisdiction, are not governed by the strict rules of the common law, but act upon enlarged principles of equity.

It is notorious, that in foreign countries, supplies and advances for repairs and necessary expenditures of the ship, constitute, by the general maritime law, a valid lien on the ship; a lien which might be enforced *in rem*, in our courts of admiralty, even if the bottomry bond were, as it certainly is not, void *in toto*.

An objection was taken to the bond, that the supplies and advances might have been obtained on the personal credit of the owners of the ship, without an hypothecation: *Held*, that the necessity of the supplies and advances being once made out, it is incumbent upon the owners, who assert that they could have been obtained upon their personal credit, to establish that fact, by competent proofs; unless it is apparent from the circumstances of the case.

It was objected, that the supplies and repairs were, in the first instance, made on the personal credit of the master of the ship, and therefore, could not be afterwards made a lien on the ship: *Held*, that the lender on the bottomry bond might well trust the credit of the master, as auxiliary to his security; and the fact that the master ordered the supplies and repairs, before the bottomry was given, can have no legal effect to defeat the security, if they were ordered by the master, upon the faith, and with the intention that a bottomry bond should be ultimately given to secure the payment of them. In cases of this sort, the bottomry bond is, in practice, ordin-