case of *Ripley* v. *Gelston*, is recognised and adopted; that the cases which exempt an agent, when the money is paid over to his principal without notice, do not apply to cases where the money is paid by compulsion, or extorted as a condition, &c. From this view of the cases, it may be assumed as the settled doctrine of the law, that where money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility, by paying it over to his principal, if he has had notice not to pay it over. The answer, therefore, to the third point must be, that the collector is personally liable to an action to recover back an excess of duties paid to him as collector, under the circumstances stated in the point; although he may have paid over the money into the treasury.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the southern district of New York, and on the questions on which the judges of the said circuit court were opposed in opinion, and which were 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, it is the opinion of this court, on the first question, that the said shawls and suspenders were *not a
*159] manufacture of wool, or of which wool is a component part, within the meaning of the words "all other manufactures of wool, or of which wool is a component part," in the second article of the second section of the act of congress of 14th July 1832. On the second question, it is the opinion of this court, that, under the facts as stated in the said second question, the collector is not personally liable. On the third question, it is the opinion of this court, that the collector, under the circumstances as stated in the said question, is liable to an action to recover back an excess of duties paid to him as collector, although he may have paid over the money into the treasury. Whereupon, it is ordered and adjudged by this court to be so certified to the said circuit court of the United States for the southern district of New York.

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*160] *John Hogan, Plaintiff in error, *v.* Thomas J. Foison.

Appellate jurisdiction.—Amount in controversy.—Burden of proof.

The *onus probandi* of the amount in controversy, to establish the jurisdiction in a case brought before the court by writ of error, is upon the party seeking to obtain a revision of the case; he may prove that the value exceeds $2000, exclusive of costs. In this case, the matter in question is the ownership of one negro woman and two children, who are slaves, and it is not supposed their value can be equal to that sum. The writ of error was dismissed.

Error to the District Court for the Southern District of Alabama.

This case was argued by *Coxe*, for the plaintiff in error; and by *Key*, for the defendant. After the argument, the court, on inspecting the record, became satisfied that the amount in controversy between the parties was not sufficient to give the plaintiff a right to bring the case up by a writ of error.

Story, Justice, delivered the opinion of the court.—The court are not satisfied, that this case is within their appellate jurisdiction. To support

Ventress v. Smith.

that jurisdiction, it is necessary that it should appear upon the face of the record, or upon affidavits to be filed by the parties, that the sum or value in controversy exceeds $2000, exclusive of costs. The *onus probandi* is upon the party seeking to obtain a revision of the case, to establish the jurisdiction. Here, the whole matter in controversy is the ownership of one negro woman and two children, who are slaves; and it is not supposed, that their value can be equal to $2000. The bond in the case, in the nature of a forthcoming bond, in a larger penalty, does not vary the result. But the plaintiff in error is at liberty to establish, if necessary, that the value exceeds that sum. But there are other cases on the docket, between the plaintiff in error and other persons, which involve the same points which have been argued in this case. If any of these cases involve a sum or value, which entitles the court to take jurisdiction, we will hereafter give an opinion upon those points.

Writ of error dismissed.

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*WILLIAM C. S. VENTRESS *et. al.* Executors of LOVIC VENTRESS, deceased, Plaintiffs in error, *v.* NEAL SMITH, Administrator of JOHN CLARK, deceased. [*161

Powers of executors.—Sales.

The power to sue for debts due to the estate of an intestate is implied in the authority given to administrators *ad colligendum*, issued under the authority of the statute law of Mississippi.

Construction of the statute of Mississippi providing for the substitution of executors or administrators, when either party to a suit dies before judgment.

It is incumbent on a plaintiff in error to make out an alleged error, clearly and satisfactorily; every reasonable intendment should be in favor of a judgment of a court.

The administrator, in Alabama, had sold slaves belonging to the estate of the intestate, without an order of court, authorizing the sale; and by private sale. The statute of Alabama declares, that it shall not be lawful for any executor or administrator to dispose of the estate of any testator or intestate, at private sale, except where the same is directed by the will of the testator; but that, in all cases where it may be necessary to sell the whole, or any part of the personal estate, application must be made to the orphans' court for an order of sale, which sale is required to be at public auction, after giving notice thereof as pointed out by the statute. The sale of these negroes, although *bonâ fide* and for a valuable consideration, was not made according to the provisions of this law; it was a private sale, and made without any order from the court; the order of sale expressly excepts the negroes. The sale was, then, not only without authority, but in express violation of the provisions of the statute; such a sale cannot be supported, upon any principles of law.

Executors and administrators, in making sales of property, must comply strictly with the requisites of all statutory provisions on the subject; and unless every essential direction of the law is complied with, all whose interests are affected by the authority to sell are not concluded by the sale, unless, from a long acquiescence, a foundation is laid for a fair and reasonable presumption, that the requisites of the law had been complied with; no such presumption can arise in this case. It is a general rule of law, that a sale by a person who has no right to sell, is not valid against the rightful owner.

Authority given to executors and administrators to sell, is a personal trust, and must be strictly pursued; and if they transcend their authority, in any essential particular, their act is void.

It has sometimes been contended, that a *bonâ fide* purchase for a valuable consideration, and without notice, was equivalent to a purchase in market-overt, under the English law, and bound the property against the party who had right. But we are not aware, that this Saxon institution of markets-overt, which controls and interferes with the application of the common law, has ever been recognised in any of the United States, or received any judicial sanction; at all events, no local usage or custom has been shown, applicable to the present case, to take it out of the general principle of the law of sales.