*Edward Hardy *v.* Jesse Hoyt.

Duties on imports.

Stockings and half-stockings made entirely of silk, imported from Liverpool, in October 1838, were exempted from the payment of duty, by the act of congress passed March 2d, 1833, entitled "an act to modify the act of the 14th July 1832, and all other acts imposing duties on imports."

Certificate of Division from the Circuit Court for the Southern District of New York. This cause came before the court on a *certiorari* to the superior court of the city of New York, the action being in *assumpsit* to recover from the defendant the sum of $148.29, received by him as collector of the port of New York, for duties on an importation of silk hose. The duty was levied at the rate of 25 per centum *ad valorem*, as "hosiery," under the 2d article of the 2d section of the act of congress, approved July 14th, 1832, entitled "an act to alter and amend the several acts imposing duties on imports." The plea of *non assumpsit* was pleaded by the defendant in bar of the action.

It being proved that the articles imported where stockings and half-stockings, made entirely of silk, and were imported from Liverpool, in England, in the ship St. Andrew, in the month of October, in the year 1838, which port of Liverpool is a port this side of the Cape of Good Hope; the following point was presented, during the progress of the trial, for the opinion of the judges, on which the judges were opposed in opinion, viz: Whether the said silk hose was subject to the payment of the duty imposed on hosiery, by the 2d clause of the 2d section of the act of July 14th, 1832, entitled, "an act to alter and amend the several acts imposing duties on imports?" Or whether, as manufactures of silk, not being sewing silk, they were exempted from the payment of duty, by the 4th section of the act of March 2d, 1833, entitled, "an act to modify the act of the 14th of July 1832, and all other acts imposing duties on imports," which declares, that all manufactures of silk, or of which silk is the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk, shall be free. Which point, upon which the disagreement had happened, under the direction of the judges of the said court, at the request of the counsel for the parties in the cause, was ordered to be certified unto the supreme court of the United States, at the next session.

The case was submitted to the court, on the argument in the case of *Bend* v. *Hoyt*, by *Raymond* for the plaintiff; and *Grundy*, Attorney-General, for the United States.

*293] *Story, Justice, delivered the opinion of the court.—This case involves the second point only, which has been just decided in the case of *Bend* v. *Hoyt* (*ante*, p. 263), and therefore, it is only necessary to say, that it will be certified to the circuit court for the southern district of New York, that the silk stockings and half-stockings mentioned in the case, were exempted from duty on their importation, under the act of the 2d of March 1833, ch. 384.

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, on

the points and 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, this court is of opinion, that the silk hose, as manufactures of silk, not being sewing silk, were exempted from the payment of duty, by the fourth section of the act of the 2d of March 1833, entitled, "an act to modify the act of the 14th of July 1832, and all other acts imposing duties on imports," which declares, that all manufactures of silk, or of which silk is the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk, shall be free of duty. Whereupon, it is ordered and adjudged by this court, that it be so certified to the said circuit court, and that this case be remanded to the said court, that further proceedings may be had therein according to law.

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*John P. Van Ness, Appellant, *v.* Alpheus Hyatt and others, [*294
Appellees.

Execution.—Equity of redemption.

The principle of the common law undoubtedly is, that no property but that in which the debtor has a legal title, is liable to be taken in execution; and, accordingly, it is well settled in the English courts, that an equitable interest is not liable to execution. In the United States, different views have been taken of this question, in the courts of the several states; except as against the mortgagee, the mortgagor is regarded as the real owner of the property mortgaged; and this rule has very extensively prevailed in the states of the United States, that an equity of redemption is vendible as real property, on an execution; and that it is also chargeable with the dower of the wife of the mortgagor.

The equity of redemption of a mortgagor of land, in that part of the district of Columbia ceded by the state of Maryland to the United States, cannot be taken in execution under a *fieri facias;* at the time of the cession to the United States, the rule of the common law was the law of Maryland.[1]

It is not necessary to refer to authorities, to sustain a proposition, that a *chose in action* is not liable to be levied on by a *fieri facias.*

Van Ness *v.* Hyatt, 5 Cr. C. C. 127, affirmed.

Appeal from the Circuit Court of the District of Columbia, and county of Washington. In November 1836, the appellant filed a bill in the circuit court, against Alpheus Hyatt and others. The following were the important facts in the case, as sustained by the evidence:

In December 1818, William Cocklin leased to James Shields a lot of ground in the city of Washington, for ten years, from January 1st, 1819, for the rent of $35 per annum. The lessee covenanted to erect and build, within twelve months, a two-story brick house upon the lot; and the parties agreed, that if, at or before the expiration of the lease, the lessee should pay to the lessor the sum of $375, the rent should cease, and so, if a portion or part of the sum of $375 should be paid within the time, the rent should be diminished according to the sum or sums paid. On the payment of the whole of the sum, William Cocklin was to make to the lessee a good and sufficient title in fee-simple to the lot.

James Shields, on the 23d of September 1823, mortgaged the lot and improvements upon it, to John Franks, to secure a debt of $1127; and on

[1] See Smith *v.* McCann, 24 How. 398.