in the cases stated by the said circuit court be and the same are hereby affirmed; with the modification, that this cause be and same is hereby remanded to the said circuit court, with directions to that court to take such further steps in regard to the improvements, and to the putting of Walden or his representative in possession of the promises recovered in the ejectment suits, as shall be conformable to the decrees hereby affirmed, and to the principles of equity.[1]

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*Jefferson S. Edmonds and others, Appellants, *v.* Anderson Crenshaw, Appellee. [*166

Powers and responsibilities of executors.

Where there are two executors in a will, it is clear, that each has a right to receive the debts due to the estate, and all other assets which shall come into his hands; and he is answerable for the assets he receives; this responsibility results from the right to receive, and the nature of the trust. A payment of the sums received by him to his co-executor, will not discharge him from his liability to the estate; he is bound to account for all assets which come into his hands, and to appropriate them according to the directions of the will.[2]

Executors are not liable to each other; but each is liable to the *cestuis que trust* and devisees, to the full extent of the funds received by him.

The removal of an executor from a state in which the will was proved, and in which letters-testamentary were granted, does not discharge him from his liability as executor; much less does it release him from his liability for assets received by him and paid over to his co-executor.

Appeal from the Circuit Court for the Southern District of Alabama. The appellee, with one James McMorris, was, by the will of Aaron Cates, of South Carolina, made on the 8th day of February 1816, and proved on the 15th of the same month, appointed executor of the will. Letters-testamentary were granted to both the executors. The will directed the estate of the testator to be sold; and after the payment of the debts, directed the executors to invest the residue of the proceeds of the estate in stocks, for the benefit of certain persons named in the will; and who were appellants in this case. The estate was sold, and the accounts were settled by the executors with the ordinary. The executors failed to invest the proceeds of the sales in stocks. This bill was filed to compel a performance of the directions of the will by the appellee.

The defendant in the circuit court, stated in his answer, that the moneys of the estate were not invested in stocks, in consequence of the opposition of one of the legatees, a complainant in the bill; and because the sums collected were not sufficiently large. That, although at the time of the taking out the letters-testamentary, he was a resident of South Carolina, yet, that in 1819, he removed to Alabama, having first delivered over to his co-executor, McMorris, all the assets of the estate which had ever come to his hands, and took the receipt of the co-executor for the same, which receipt he filed with the court of ordinary which had granted the letters-testamentary, and surrendered to the co-executor the exclusive management of the estate of the testator. McMorris had become insolvent.

The case was heard on the bill, answer and the receipt; and the circuit

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[1] For a further decision in this long pending case, see 9 How. 34.

[2] See notes to Brown's Appeal, 1 Dall. 311.

court ordered the bill to be dismissed. From this decree, an appeal was prosecuted to this court.

*167] *The case was argued by *Key*, for the appellants. No counsel appeared for the appellee.

For the *appellants*, it was contended, that the defendant was bound to invest the proceeds of the sales in the stocks, as directed by the will of Aaron Cates; and that for any loss occasioned by his failure to do so, he was liable. The renunciation was of no effect. No discharge from liabilities as executor can be obtained, without the action of the court. His liabilities continued, and they were not changed or diminished by his removal to Alabama. The receipt given to him by his co-executor had no operation on his responsibilities under the will. While it will be admitted, that one executor is not liable for payments made to a co-executor; it is denied, that a payment of the money by one executor to another, instead of a compliance with the will, by investing the money, has no effect on those liabilities. Cited, 1 Williams on Executors 148–9; Ambl. 117; 2 P. Wms. 1124; 1 Vent. 335; 2 Bro. C. C. 117; 2 P. & W. 498; Prec. in Chan. 173; 2 Sch. & Lef. 245; 7 East 246; 11 Johns. 16, 116; 16 Ves. 478; 1 Merriv. 711; 1 P. Wms. 241.

McLean, Justice, delivered the opinion of the court.—This is an appeal from the circuit court of Alabama. The complainants represent themselves to be the devisees of Aaron Cates, deceased, who, on the 7th of February 1816, made his will, in which he required all his estate, both real and personal, to be sold at public auction, by his executors, on a credit of one, two and three years; the purchaser to give two good freehold securities and a mortgage on the property, to secure the payments. Three bequests, of $100 each, were made to certain individuals, to one of whom he gave his wearing apparel. After the payment of these bequests, his funeral expenses, and ten per cent. on moneys collected by his executors, he directed that his executors should vest the entire balance, including the net proceeds of his estate then in their hands, in bank-stock, or in shares or capital of such companies or corporations as in their judgments should be most proper and productive, in trust for certain uses, and subject to certain restrictions; and he appointed "his friends, Anderson Crenshaw and James McMorris, executors; and on the death of either, the survivor was to be sole executor, with power of appointing, either by deed or by will, a proper person to carry into effect the provisions of the will." On the death of the testator, the executors proved the will in the ordinary's office for Newberry district, in the state of South Carolina, and qualified as executors. They caused the property to be appraised and sold, and made returns thereof to the above office; the sale-bill, they allege, amounted to the sum of $21,144. And the *168] complainants *state, that at the time of his decease, the testator had a considerable sum of money on hand, and that many debts on accounts, notes, bonds and mortgages, were due to him; and afterwards came into the hands of his executors.

The bill alleges, that the defendant, one of the executors, some years since, removed from the state of South Carolina to the state of Alabama, without vesting or causing to be vested any part of the funds belonging to

the estate, in the hands of the executors. That the defendant left the state of South Carolina, without settling the estate or accounting for the funds which came into his hands; that McMorris continued to act as executor; and that there is in the hands of the executors about the sum of $16,000, funds of the estate; and that they have neglected and refused to account for and pay over the same. That McMorris is insolvent; and the complainants pray that the executors may account, &c.

The defendant, Crenshaw, in his answer, admits that Aaron Cates made the will, as stated in the bill, and that it was proved; that he was qualified with McMorris as executor, made the returns to the ordinary as stated, but does not recollect the amount of the estate. He states, that a part of the estate sold by the executors was recovered from the purchasers, by others; and that debts to a considerable amount were paid by the executors. He admits, that in the year 1819, he removed to Alabama; and that the executors, previous to this time, made no investment of the funds, because the amount on hand was small, and Mrs. Wadlington, one of the legatees, and only daughter of the testator; and who was the natural guardian of her then infant children, who were the principal legatees, opposed such investment by every means in her power. And the defendant states, that before he left South Carolina, he surrendered up and delivered over to McMorris, his co-executor, all the assets of the estate which had come to his hands; including cash, evidences of debt, and other liabilities; and took from him a receipt, which is made a part of the answer. That until this time, he and his executor had made correct returns to the ordinary of their proceedings; and that since then, he has not intermeddled with the estate. The parties agreed to go to a hearing on the bill and answer; and that the receipt referred to in the answer given by McMorris to the defendant, should be considered as duly proved.

On the bill, answer and receipt, the question arises, whether the defendant is discharged from the trust under the will? Where there are two executors in a will, it is clear that each has a right to receive the debts due to the estate, and all other assets which shall come into his hands; and he is responsible for the assets he receives. This responsibility results from the right to receive, and the nature of the trust; and how can he discharge himself from this reponsibility? In this case, the defendant has attempted to discharge himself from responsibility by paying over the assets received by him to *his co-executor. But such payment cannot discharge him. Having received the assets in his capacity of executor, [*169 he is bound to account for the same: and he must show that he has made the investment required by the will, or in some other mode, and in conformity with the trust, has applied the funds. One executor, having received funds, cannot exonerate himself, and shift the trust to his co-executor, by paying over to him the sums received. Each executor has a right to receive the debts due to the estate, and discharge the debtors; but this rule does not apply as between the executors. They stand upon equal ground, having equal rights, and the same reponsibilities. They are not liable to each other, but each is liable to the *cestuis que trust*, to the full extent of the funds he receives. *Douglass* v. *Satterlee*, 11 Johns. 16; *Fairfax's Executors* v. *Fairfax*, 5 Cranch 19.

The removal of the defendant from the state did not render him incapa-

ble of discharging his duties as executor; much less did it release him from the assets he received and paid over to his co-executor. In the case of *Griffith* v. *Frazier*, 8 Cranch 9, this court held, "that an executor who absents himself from the state, after taking out letters-testamentary, is still capable of performing, and is bound to perform, all the duties of executor." This was a case where there was but one executor.

The liability of the defendant arises under the laws of South Carolina, which regulated his duties as executor. He is responsible for all the assets of whatsoever kind which came into his hands as executor; and which he has not accounted for and paid over, as directed by the will.

The circuit court held, that the facts set up in the answer, with the receipt of his co-executor, releases the defendant from his trust; and from all responsibility under it. In this the court erred, and their decree, on this grond, is reversed and annulled; and the cause is remanded to that court, with directions to have an account taken of all the assets which came into the possession of the defendant as executor, and to enter a decree in favor of the complainants against him, for the amount he shall have received and not accounted for to the ordinary, and paid over, in conformity with this opinion.

Decree reversed.

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*170] *Richard Raynal Keene, Plaintiff in error, *v.* Warren Whitaker, Laura Wade, George Dougherty, Francis Marks and C. Cunningham, Defendants in error.

Cession of Louisiana.

The case of Foster *v.* Neilson, 2 Pet. 254; and Garcia *v.* Lee, 12 Ibid. 511, which cases decide against the validity of the grants made by the Spanish government, in the territory lying west of the Perdido river, and east of the Mississippi river, after the Louisiana treaty of 1803, cited and affirmed.

Appeal from the Circuit Court for the Eastern District of Louisiana. On the 26th November 1833, the appellant filed a petition in the circuit court of the eastern district of Louisiana, claiming under conveyances to him from Daniel Clarke, deceased, a tract of land, of 947 acres, part of 50,000 arpents, which, in 1804, had been granted by the Spanish intendant, Don Juan Ventura Morales, in the name of the Spanish government, to Don Gilberty Andry, who was the vendor of part of the tract to Daniel Clarke. This tract was situated in that part of what was alleged to be a part of Louisiana, by the United States, between the river Perdido and the river Mississippi, they claiming the same under the cession of France to the United States of Louisiana. The United States had asserted that this country had been transferred to France by Spain, by the treaty of St. Ildefonso, of 1800, and under the treaty with France belonged to the United States. Under this claim, the United States had caused sales of the land to be made; and the defendants in error had become the purchasers under the United States, of the tract which the petitioner asserted to belong to him under the grant to Don Gilberty Andry. The petition prayed proceedings against those who had purchased from the United States; and all just and legal aid in the premises.

The defendants, in their answer to the petition, alleged, that subsequently