any bankrupt or insolvent system professes to summon the creditors before some tribunal, to show cause against granting a discharge to the bankrupt. But on what principle can a citizen of another state be forced into the courts of a state for this investigation? The judgment to be passed, is to prostrate his rights; and on the subject of those rights, the constitution exempts him from the jurisdiction of the state tribunals, without regard to the place where the contract may originate." In *Ogden* v. *Saunders:* "A bankrupt or insolvent law of any state, which discharges both the person of the debtor and his future acquisitions of property, is not a law impairing the obligation of contracts, so far as respects debts contracted subsequently to the passage of the law. But a certificate of discharge cannot be pleaded in bar of an action brought by a citizen of another state, in the courts of the United States; or of any other state than that where the discharge was obtained."

Though this is a statute intended to act upen the distribution of insolvent estates, and not a statute of bankruptcy; whatever exemption it may give from suit to an executor or administrator of an insolvent estate, against the citizens of Alabama, a citizen of another state, being a creditor of the testator or intestate, cannot be acted upon by any proceedings under the statute, unless he shall have voluntarily made himself a party in them, so as to impair his constitutional and legal right to sue an executor or administrator in the circuit court of the United States. Let it then be certified to the circuit court of the United States for the southern district of Alabama, as the opinion of this court, *that the plea that the estate of the decedent is insolvent, is not sufficient in law to abate the plaintiffs' action. [*76

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 Alabama, and 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, it is the opinion of this court, that "the plea that the estate of the said decedent is insolvent, is not sufficient in law to abate the plaintiffs' action." Whereupon, it is now here ordered and adjudged by this court, that it be so certified to the said circuit court accordingly.

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*William A. Carr, Appellant, *v.* Samuel H. Duval and others, Appellees. [*77

Specific performance.

A decree for a specific performance of a contract to sell lands, refused, because a definite and certain contract was not made; and because the party who claimed the performance had failed to make it definite and certain on his part, by neglecting to communicate by the return of the mail conveying to him the proposition of the vendor, his acceptance of the terms offered. Eliason *v.* Henshaw, 4 Wheat. 225, cited, and the principles of the decision re-affirmed.

If it be doubtful, whether an agreement has been concluded, or is a mere negotiation, chancery will not decree a specific performance.

Appeal from the Court of Appeals for the Territory of Florida. The case is fully stated in the opinion of the court.

The cause was argued by *Coxe* and *Webster*, for the appellant ; and by *Jones* and *Crittenden*, for the appellees.

Catron, Justice, delivered the opinion of the court.—In October 1825, William Harris, of Montgomery, Alabama, made his will, devising to his two sons, William and Stephen, the tract of land in controversy, lying on Lake Jackson, in Florida. Stephen and William, at their father's death, were both minors ; and William soon after died, leaving two brothers and three sisters, who are his heirs ; and two of whom were infants when this bill was filed, and two of them married women. The land was unimproved and undivided. In the fall of 1835, William A. Carr, the complainant desired to purchase the land, and applied to Stephen W. Harris for the purpose, by letter ; he, Carr, residing in Georgia. The letter of Carr, opening the correspondence, is not in the record, but the answer to it is sufficiently explanatory. The answer is dated August 17th, 1835 ; in which Stephen W. Harris says, his father left the land to his young brother and himself, that his brother had died long since, and he had just come of age, and was entitled to half the land, which could be divided at any time ; "and my half," says he, "is for sale, but it has first to be divided ; my price for that is ten dollars per acre." "The remaining half is owned by the brother and sisters of said brother, and I believe they are willing to sell, and their price, I expect, is ten dollars. Before any part of the land, short of the whole tract, could be sold, it would first have to be divided ; the whole could be sold so, and our price is ten dollars."

The next letter from Stephen W. Harris to complainant, is dated December 15th, 1835, acknowledging the receipt of one, the day before, from com-
*78] plainant, requesting to be informed of the quantity of *the land. The answer stated it to be 2131¼ acres ; and proposed to take Carr's offer for it, with interest on the last note, having two years to run. On January 2d, 1836, Harris acknowledged the receipt of another letter from Carr, dated the 25th December, preceding. "I have," says he, "come to the determination to sell you the land, on the terms you mentioned :" and then asks to be informed when and where they shall meet to make the necessary arrangements. The letter of Carr of the 25th December, referred to, offers to exchange some lands of his in Georgia (which, he says, he had previously described), rated by him at $20,000, for the Florida lands, he giving $3000 difference ; or, he would make the same offer he had previously done. What this offer was, appears by Harris's letter of the 16th January 1836 ; and as this letter is the conclusion of the correspondence, so far as Harris was concerned, and is the principal evidence relied on to establish the agreement, it becomes necessary, for the purposes of its proper understanding, and to ascertain the sense in which the parties understood it, to set it forth, together with the answers to it, of the 3d and 19th of February.

"Mr. William A. Carr. Montgomery, January 16th, 1836.

"Sir :—Yours of the 12th instant is just received, and in reply have only to remark, that I will accede to your first proposition, as stated in my last letter : that is, one-third cash, the balance in two equal instalments, with a mortgage on the land—the last two payments to be made in cash—and as all the heirs live in the neighborhood of this place, it will be the only place

where we can conveniently meet to close the bargain. I wish to know your decision *per* return mail, as I have three other offers for the land, and can sell it immediately, if you do not wish to take it."

"MR. STEPHEN W. HARRIS. Athens, February 3d, 1836.

"Dear Sir:—Yours of the 16th January I received upon my return from Augusta, and according to your request, hasten to answer it, and for answer say, that I am still as desirous as ever of taking the land, and have considered myself bound to you for the money, and you as equally bound to me for the title to the land; but as there was, in my mind, at least, some doubt to which of my propositions you had acceded, I thought it best to write again, and be definitely informed on that subject, for the reasons stated in my last. It will be out of my power to go to Montgomery, as my family is sick; my wife, who has been confined, took cold, by leaving her room too soon after her confinement, and upon my arrival at home, found her quite sick; although better, is still too unwell for me to leave home just at this time; and our court commencing here next week, I shall have to remain until that is over; then I am *compelled, if my wife's health permits, to go immediately to Florida, as you have, no doubt, heard [*79 of the distressing situation of the country there, in consequence of the Indian hostilities; so you will have to get all the parties interested in the land together, which I suppose you can easily do, as you say they all live in the neighborhood, and have the titles perfected to me; and in doing so, the titles must be conjointly by all the heirs interested in the land, made and executed; and those who have families, their wives must assign over and relinquish their right of dower to the same; and when it is, that is, the title, properly executed, one of you can carry it or send it to me, or some agent at Tallahassee, and receive the first payment for the same, and my notes for the balance of the purchase-money, and the mortgage on the land, which suits me better than personal security; and in order that the business may be more properly executed, yourself and Judge Field had better be in Florida, for I shall require the boundaries of the land to be defined, so that I may know where the land lies, and when I am on my own land; as well as avoid getting on any of my neighbors' land. Will you be pleased to state what are the offers made you, and by whom, as you say in your last letter, you "have three other offers for the land," be good enough to state explicitly by whom they are made, what is the amount of each offer, and the payments. I ask this, as it cannot now make any difference to you, as I consider this matter closed between us; in other words, I consider the trade as made between us, which puts the land entirely out of the market. Any further communication between us will have to be sent to me to Tallahassee, Florida, as the mail communication between this and Montgomery, is so uncertain, that an answer would not reach here, until I should be gone to Florida. If you would prefer to remain at home, until you know certainly when I would be in Florida, I will write, on my arrival there, to you, and inform you when to meet me or go on there; the latter plan will, perhaps, be more desirable to you. I must here inquire, if any part of this tract has been taken off or sold to any person, as I have understood by some, it contained 2300, and by others, 2400 acres; but you always told me in our cor-

respondence you would not divide it. Shall I hear from you at Tallahassee, as an answer would reach me there by the time I reach there?"

"Mr. Stephen W. Harris. Macon, February 19th, 1836.

"Dear Sir:—You will perceive by the date of my letter, I am thus far on my way to Florida, where, if no accident prevents, I shall reach there in the course of five days more, where I hope to see you and have our business brought to completion, where I can pay you the first payment, most of which I have had for some time, and take a title to the land. I have been delayed starting as early as contemplated, from circumstances entirely beyond my control; but soon, now, I hope, I shall be able to comply, on my part, and *hope, ere this, you have received my last letter, and had the title completed according to directions, viz., to have all the heirs interested in the land to join you in the title, and those who have wives, to have them, their wives, to assign over and relinquish dower to the same; and you can start for Tallahassee as soon as you please."

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The letter of Harris, when taken in connection with the former letters, has no ambiguity in it; he was acting not for himself only; but a sister and a brother, without any express authority from them; he could have none such from three of the joint owners—two infants and one a *feme covert*. There was, therefore, only one probable way in which the bargain could be closed; that is by a title-bond or deed, on the part of Stephen W. Harris, his brother and brother-in-law; the married adult sister joining in the deed, should one be made, and a covenant by others, as sureties, that the infant heirs should convey when they came of age. This would have been a very responsible suretyship, and not at all likely to have been undertaken by others than the family or neighbors of the parties; and hence, at Montgomery, was the only place (in the language of the letter of the 16th January) where the bargain could be conveniently closed; indeed, it was the only place where there was the slightest probability of closing at all.

It is obvious, Stephen W. Harris had carried on the correspondence upon his own judgment, without consultation with most of the other defendants, as to details; under the general understanding in the family, that they would take for their portion of the land the same price he saw proper to take for his. In the correspondence, the price and times of payment were stated; and it was required that a mortgage should be given on the land, for the last two annual instalments; but what other security would be required, was left open; so it was left open, what security would be given to Carr for the title. Where and how it should be made, was the great difficulty in closing the agreement. So far as the infant sisters were concerned, it was a difficulty that Stephen W. Harris had probably not seriously thought of; and was first met with, when he set about making deeds in pursuance of the complainant's letter; with which Harris found it impossible to comply. He was taught by experience, what would at first have prevented most men of the age and business habits from proposing to contract for the sale of the lands of infant sisters, who would probably marry before

they became of age ; and if the land should increase in value, their husbands would refuse to sanction the contract.

But was the letter of the 16th of January an agreement on behalf of Stephen W. Harris ? Complainant's purpose was to establish a cotton farm, or to procure lands fit for such an establishment. He obviously did not wish to purchase lands in an undivided state ; nor did he make any proposition to purchase Stephen W. Harris's undivided interest ; it would have been unfit for occupation in this *condition. The proposition was to purchase the whole ; nor did Stephen W. Harris offer to sell less [*81 than the whole, before a partition should be made between him and his sister and brother. The idea of incumbering the title of the latter with a tenant in common, in possession, and cultivating the land in an undivided state, was, of course, rejected by Mr. Harris ; so he distinctly informed Mr. Carr.

The idea of a partial sale and purchase not entering into the contemplation of either party, we must construe the letter of the 16th of January in reference to this undoubted intention. Mr. Carr was bound to know that the statute of frauds was in force in Florida, and, no doubt, did know the fact ; we take it for granted he did, and that the agreement for the sale of the land must be in writing, signed by the parties to be charged. How then was it possible he could understand the letter of the 16th of January to be a complete and concluded agreement, even had it been simply accepted? He is told, all the heirs reside in the neighborhood of Montgomery, and in effect, that it is the only place where they can meet to close and conclude the bargain. Now, if the bargain was already made, as the bill assumes, why meet to close it ? The truth is prominently apparent, from the face of the letter, what the intention of Harris was ; and nothing but the serious aspect given to it by the pleadings and arguments, would have induced the court to explain this note of a few lines, which, it must be admitted, is almost as likely to be obscured, as elucidated, by the attempt. We think no man of ordinary capacity could have been so far mistaken, as to believe the heirs of William Harris bound by the letter of the 16th of January ; nor even that Stephen W. Harris was bound thereby ; the object of the purchaser and vendor being a joint sale, and that only ; the owners of four-tenths of the estate being no parties to the letter ; two of them infants, and another a married woman, who were incapable of assent, and gave none in fact, so far as this record furnishes any evidence. We, therefore, think it clear, that this was merely a treaty for a sale and purchase of the land, not perfected into an agreement (11 Ves. 599) ; and that the letter does not import to be a contract. 2 Sim. & Stu. 194.

But suppose, the letter of the 16th January had bound Stephen W. Harris, and if it was possible, under the circumstances, to compel him to partial performance, so far as he had title ; what effect did the letters from complainant to him of the 3d and 19th February, have on that of the 16th January ? On the 3d of February, nineteen days after the proposition was made in the letter of the 16th of January (and which demanded an answer by return of mail), the complainant replied ; not that he accepted the proposition as made (an indispensable part of which was that he should immediately come to Montgomery, and there close the bargain) ; but that his family was sick ; that he had a court to attend ; then, if his wife's health permitted, he

had to go to Florida ; and of course, could not come to Alabama at all ; and "so," says he, "you will have to get all the parties interested in the land
*82] *together, which I suppose you can easily do, as you say they all live in the neighborhood, and have the titles perfected to me ; and in doing so, the titles must be conjointly by all the heirs interested in the land, made and executed ; and those who have families, their wives must assign over and relinquish their right of dower." And then complainant instructs Stephen W. Harris to send or bring the deed to Tallahassee, to complainant, or to some agent of his. He also requires, that the boundaries of the land shall be defined ; and concludes by asserting, that he deems the agreement closed, and the land out of the market. The first payment complainant proposed to make at Tallahassee, in Florida ; and there to execute the contract on his part, by giving his notes for the two remaining instalments, and a mortgage on the land.

The additions to this acceptance of the proposition of the 16th January, are so numerous and important, as to hardly need comment ; when it is recollected, that complainant was dealing for the property, in part, of infants and married women. It was impossible, a conjoint deed could be executed ; three of the parties had no power to make such a deed ; and complainant required a conjoint one by all the heirs interested in the land, and this made and executed before he would undertake to comply with his part of the proposed agreement. Furthermore, it was to be made in Alabama ; there signed, sealed and witnessed, and then to be delivered in Florida. The infants, of course, could only act in receiving the money, by guardian ; of course, the guardian in Alabama might well question his authority in Florida. That the land should be defined, was also a change ; but whether amounting to a rejection of the proposition of the 16th of January, was there no other objection to the acceptance, we shall not stop to inquire.

But if nothing else stood in the way, the time of the acceptance is conclusive of the complainant's claim. The letter of the 16th January desired an answer by return of mail ; why, is distinctly stated. Three other propositions to purchase the land had been made. No answer came by return of mail ; and not until twenty days after, was an answer put in the mail ; and by that the parties were directed to meet complainant at Tallahassee, not immediately, but presently, of which he was to give them information. By the terms of the acceptance, the time of meeting rested in the discretion of the complainant. He claimed, by his letter of the 3d February, the contract to have been concluded ; and therefore, could, according to his construction of it, take his own time to order the respondents to meet him in Florida ; and by his note of the 19th February, he does give them vague instructions of the time. We think the assumption of the complainant thus to construe his acceptance, utterly unwarrantable. The rule laid down by this court in *Eliason* v. *Henshaw*, 4 Wheat. 228, is, that an offer of a bargain by one person to another, imposes no obligation upon the
*83] *former, unless it is accepted by the latter, according to the terms in which the offer is made ; and that any qualifications of, or departure from, the terms, invalidates the offer, unless the same be agreed to by the person who made it. Until the terms of the agreement have received the assent of both parties, the negotiation is open, and imposes no obligation on either. The party offering to sell or buy has the right to dictate the terms

in regard to the time when the proposition shall be accepted, as well as to other material circumstances; nor would the court be astute to inquire after the reasons why a time for acceptance was fixed. The case cited from 4 Wheaton is full to this point. In the case before the court, the reasons lie at the surface. Three other persons were offering to purchase, and it was all-important to know the determination of the complainant at the earliest day. A stronger case for a prompt answer could hardly be presented. Nor do the circumstances set up in excuse by the complainant, such as the situation of his family, the necessity of attending a court, or of going to Florida, alter the case. The complainant, Stephen W. Harris, dictated, as he had the power to do, an answer by return of mail; and if no answer was had by the return of mail, he was free to contract with another.

If it be doubtful whether an agreement has been concluded, or is a mere negotiation, chancery will not decree a specific performance; the principle is a sound one, and especially applicable in a case like this, where the party attempting to enforce the contract has done nothing upon it. *Huddlestone* v. *Briscoe*, 11 Ves. 522.

It is useless to inquire, in this suit, under what circumstances, partial performance, with compensation, could be decreed, as no case is presented for splitting up the contract. Stephen W. Harris offered to sell the whole, and complainant to buy the whole. Nor need we inquire, whether Duval and Shepherd were innocent purchasers; the other defendants having had the right to sell, Duval and Shepherd had the right to buy, of which the complainant had no just grounds to complain. We, therefore, order the decree to be affirmed, with costs.

Decree affirmed.

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*William Remington, Plaintiff in error, *v.* Otho M. Linthicum, [*84
Defendant in error.

Sheriff's sale.—Return.—Estoppel.

A sale of land by the sheriff, under the laws of Maryland, seized under a *fieri facias*, transfers the legal estate to the vendee by operation of law, and does not require a sheriff's deed to give it validity; but as sheriff's sales of lands are within the statute of frauds, some memorandum in writing of the sale is required to be made. It is immaterial, when the return to the execution is made, provided it be before the recovery in an ejectment for the land sold, as the sale must be proved by written evidence; the sale passes the title, and the vendee takes it from the day of the sale; the evidence may, therefore, be procured before or at trial.

If property is seized under a *fieri facias*, before the return-day of the writ, the marshal may proceed to sell at any time afterwards, without any new process from the court; as a special return on the *fieri facias* is one of the necessary modes of proving the sale, the marshal must be authorized to make the indorsement, after the regular return-term, in cases where the sale was made afterwards.

The return to a *fieri facias*, if written on the writ, should be so full as to contain the name of the purchaser, and the price paid for the property, or it would not be a sufficient memorandum of the sale, within the statute of frauds; nor can an imperfect return of a sale be made complete, by a reference to the private memorandum book kept by the marshal of his sales; as it was not a sufficient memorandum of a sale, within the statute.

When the deeds of the defendant in the ejectment have been referred to by the plaintiff, for the sole purpose of showing that both parties claim under the same person, this does not prevent the plaintiff impeaching the deeds afterwards for fraud.

Linthicum *v.* Remington, 5 Cr. C. C. 546, affirmed.