the case; notwithstanding the witness would, by the statute, upon the conviction of the offender, be entitled to restitution of his goods; and, if they were not restored, to satisfaction out of the future earnings of the convict, and to recompense out of the county treasury for his labor and expense in the prosecution. Upon that occasion, the court said, that when (under a former statute) the party from whom goods were stolen was, by law, entitled to treble the value, he was always received as a competent witness as to all pertinent facts.

As to the second and third questions, they do not require any particular examination, after what has been already stated. We have only to say, that if we had not been of opinion, upon the *first question, that the witness was a general witness, we should have entertained no doubt, [*214 that he was a competent witness for the purposes stated in the second question, upon the ground of necessity, and the analogy to the case of the party robbed under the statute of Winton. And as to the third question, we should have no doubt, that if the witness had such an interest in the fine as would have rendered him incompetent, his competency might have been restored by a release. If, as the argument for the defendant seems to assume, the release is of a mere possibility, no release would be necesssary; for a possibility of interest is no objection to the competency of a witness. If it is, on the other hand, a fixed interest in the event of the prosecution, then it is clearly releasable.

Upon the whole, we are of opinion, that all the questions ought to be answered in the affirmative. But at the same time, we desire to say, that although a competent witness, the credibility of his testimony is a matter for the consideration of the jury, under all the weight of circumstances connected with the case, and his interest in the result. We shall direct a certificate to be sent to the circuit court of the southern district of New York, accordingly.

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*Charles F. Hozey, Plaintiff in error, *v.* William Buchanan, [*215
Defendant in error.

Fraud.—Title to vessels.

An action was brought in the circuit court of Louisiana, against the sheriff of New Orleans, to recover the value of a steamboat sold by the sheriff, under an execution, as the property of Wilkinson, one of the defendants in the execution, Buchanan, the plaintiff, alleging that the steamboat was his property; the defendant, in his answer, alleged that the sale of the steamboat by Wilkinson to Buchanan was fraudulent; and that it was made to defraud the creditors of Wilkinson. Before the jury was sworn, the court, on the motion of the counsel for the plaintiff, struck out all that part of the defendant's answer which alleged fraud in the sale from Wilkinson to Buchanan: *Held*, that there was error in this order of the court.

By the act of congress, relating to the enrolment of ships and vessels, it is not required, to make a bill of sale of a vessel valid, that it shall be enrolled in the custom-house; the enrolment seems not to be necessary, by the law, to make the title valid, but to entitle the vessel to the character and privileges of an American vessel.[1]

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[1] The enrolment is only *primâ facie* evidence of ownership. The F. W. Johnson, 18 Leg Int. 334.

Hozey v. Buchanan.

A bill of sale of a vessel, accompanied by possession, does not constitute a good title in law; such an instrument, so accompanied, is *primâ facie* evidence of right; but in order to constitute a full right, under the bill of sale, the transfer should be *bonâ fide*, and for a valuable consideration

Error to the District Court for the Eastern District of Louisiana. This was a writ of error brought by C. F. Hozey, to reverse a judgment obtained against him by William Buchanan, in the circuit court of the United States for the eastern district of Louisiana.

The original suit was brought by Buchanan, by petition, filed in court, in which he alleged, in substance, that he was the sole owner of the steamboat called the Nashville, of the value of $12,000, when she was illegally and wrongfully seized and sold as the property of William Wilkinson, by the defendant, Hozey, the sheriff of the parish and city of New Orleans. He alleged, that he had previously purchased all Wilkinson's interest in the boat, which was small, namely, one-fifth part; that he had thereby become the sole owner, and that Wilkinson had no interest in the boat, at the time of her seizure; and that he so notified said sheriff, who nevertheless proceeded to advertise and *sell her, at a great sacrifice, and to the damage of the petitioner $12,000, for which he prayed judgment.

*216]

In his answer and defence to this petition, Hozey denied that Buchanan ever had any interest in said boat. He alleged, that she belonged to William Wilkinson, and that he, in his official capacity as sheriff, having in his hands an execution of *fieri facias* from one of the courts of Louisiana, in favor of S. W. Oakey & Company *v.* C. McCantle & Company, or Cullen McCantle and William Wilkinson, did seize and sell said boat, in virtue of said execution, as he was bound to do, she being then at New Orleans, and belonging to said Wilkinson, one of the defendants in said execution. He alleged, that Buchanan was in New Orleans, when the boat was advertised and sold, and took none of those steps allowed by law to establish his alleged right to her, or to prevent the sale; and insisted, that he had, therefore, lost all claim on the respondent. He further alleged, that if any sale had been made by Wilkinson to Buchanan, it was not made with the formalities of law, but was fraudulent, and made with intent to hinder and defraud the creditors of Wilkinson.

Both the petitioner and respondent united in the prayer that the case may be tried by a jury. It was so tried; and a verdict was rendered in favor of the plaintiff for $8500; and the court thereupon gave judgment for the amount of the verdict, and costs of suit.

Before the cause came on for trial, the counsel for the plaintiff moved the court to strike out all that part of the defendant's answer which alleged fraud in the sale of the steamboat by Wilkinson to the plaintiff. This was opposed by the counsel for the defendant. It was ordered by the court, that the same should be stricken out, to which order the defendant excepted.

On the trial of the cause, the counsel for the defendant moved the court to instruct the jury that, by the act of congress, bills of sale of ships and vessels, to be valid, must be enrolled in the custom-house; and as the bill of sale on which the plaintiff relied, was admitted not to have been enrolled, the same could not be considered as legal title: but the court refused so to charge the jury, saying to the jury, that a bill of sale, accompanied by pos-

session, constituted a good title in law. The counsel for the defendant excepted to this opinion.

*Judgment having been rendered on the verdict, the defendant prosecuted this writ of error. [*217

The case was submitted to the court, on printed arguments, by *Coxe*, for the plaintiff in error; and by *Crittenden*, for the defendant.

Coxe, for the plaintiff, contended, that the ruling of the court, as stated in the exceptions, was erroneous; and the defendant was thereby precluded from making a valid defence to the action.

Crittenden urged, for the defendant in error, that neither of the exceptions presented any sufficient ground for the reversal of the judgment, which had been rendered in favor of the plaintiff, in the circuit court.

McLean, Justice, delivered the opinion of the court.—This is a writ of error from the circuit court for the eastern district of Louisiana. In the circuit court, Buchanan commenced an action against Hozey, for the recovery of the damages he had sustained by the seizure and sale of his steamboat Nashville, by Hozey, as sheriff of the parish of Orleans. The boat was alleged to be of the value of $12,000. Hozey, in his answer, denied that Buchanan ever had any interest in the steamboat. That having received, as sheriff, a writ of *fieri facias*, issued on a judgment in favor of Oakey & Company *v.* Cullen McCantle and Wilkinson, the last of whom owned the said steamboat; and it being within the parish of Orleans; he levied upon and sold it at public auction, in conformity to law, as he was bound to do. That Buchanan knew of the levy and sale, being then in New Orleans, but took no steps to arrest the proceedings, whereby he has lost his right, if he ever had any. And he alleges, that if any sale of the boat was made by Wilkinson to Buchanan, it was not done with the formalities required by law. And that the sale, if made, was fraudulent and void, as it was made to defraud the creditors of Wilkinson. The cause was submitted to a jury, and they found for the *plaintiff of the sum of $8500. On this verdict, a judgment was rendered. [*218

Before the jury were sworn, the counsel for Buchanan moved the court to strike out all that part of the defendant's answer which alleged fraud in the sale from Wilkinson to the plaintiff, which the court directed to be done. And the counsel for the defendant moved the court to instruct the jury, that by the act of congress, bills of sale of ships and vessels, to be valid, must be enrolled in the custom-house; but the court refused so to instruct the jury; and charged them, that a bill of sale, accompanied by possession, constituted a good title in law. Exceptions where taken to these rulings of the court.

Evidence was given before the jury, written and parol, conducing to show the prior ownership of the boat, for what she had been sold, her employment, the sale to Buchanan by Wilkinson, and the circumstances connected with it.

The plaintiff in error insists on a reversal of the judgment on two grounds. 1. The striking out of the answer the allegation of fraud. 2. The invalidity of the bill of sale, it not having been enrolled as required by the act of congress.

The allegation of fraud in the answer, in the sale from Wilkinson to the plaintiff below, was a most material allegation. If established, it constituted a good defence to the action. On what ground this was stricken from the answer, by the court, is not perceived, and cannot well be imagined. No authority has been shown in the Louisiana law, for such a proceeding; and it is believed, that none exists. It would be as novel as it would seem to be unjust, to strike out of the answer, on the motion of the plaintiff, that which constitutes a good defence, and on which the defendant may chiefly rely. And this was done, too, before the cause was submitted to the jury, and consequently, before the evidence was heard. If the answer were defective in setting up incompatible grounds of defence, and on this account was liable to objection as a plea that is multifarious; still it would not seem to be the right of the plaintiff to suggest how the answer shall be amended. The answer in this case, however, does not seem to have been liable to this exception. By art. 419 of the Code of Practice,
*219] it *is said, "After issue joined, the plaintiff may, with leave of the court, amend his petition; provided he does not alter the substance of his demand, by making it different from the one originally brought." And in art. 420, "The defendant may also amend his answer, subject to the same rules, and add to it new exceptions; provided that they be not of the dilatory kind. After answering on the merits, dilatory exceptions shall not be raised by way of amendment, unless with the consent of the plaintiff." By art. 421, "When one of the parties has amended, either his petiton or his answer, the other party has the right of answering the amendment; but it must be done immediately, unless the amendment be of such nature as to induce the court to grant further time for answering the same." The defendant may set up facts different from those alleged by the plaintiff; and these are considered as denied by the plaintiff, without replication or rejoinder. Art. 328–9. By art. 2597 of the Louisiana Code, it is declared that, "Whatever may be the vices of the thing sold on execution, they do not give rise to the redhibitory action; but the rule may be set aside in the case of fraud, and declared null in cases of nullity." And in the following article, that "the sale on execution transfers the property of the thing to the purchaser as completely as if the owner had sold it himself; but it transfers only the rights of the debtor, such as they are." To this effect is the case of *Thompson* v. *Rogers*, 4 La. 9; 3 Mart. 39; 10 Ibid. 222. Independently of the above authorities, which are full and explicit, no doubt could exist as to the right of the defendant to set out in his answer his grounds of defence, and impeach the sale of the steamboat from Wilkinson to the plaintiff below, for fraud, or on any other ground. But the allegation of fraud having been stricken from the answer, by the order of the court, the defendant, of course, could not introduce evidence to prove it. This was an error of the court, which we feel ourselves called upon to correct.

The circuit court did not err in refusing the first part of the second instruction, "that by the act of congress, bills of sale of ships and vessels, to be valid, must be enrolled in the custom-house; and as the bill of sale, on which the plaintiff relies, is admitted not to have been enrolled, the same
*220] cannot be considered *as a legal title." The enrolment seems not to be necessary by the acts of congress, to make the title valid, but

to entitle the vessel to the character and privileges of an American vessel. 7 Johns. 308. But the charge that "a bill of sale, accompanied by possession, constituted a good title in law," is liable to objection. That such an instrument, connected with the possession, is *primâ facie* evidence of right, may be admitted. But in view of the evidence in the case, there should have been the qualification, that the transfer was *bonâ fide*, and for a valuable consideration. Upon the whole, the judgment of the circuit court is reversed, and the cause is remanded to that court for further proceedings.

Judgment reversed.

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*Robert Milnor, John Thompson, David Petrekin and Levi Woodbury, Secretary of the Treasury, Complainants and Appellants, *v.* George W. Metz, Appellees. [*221

Insolvency.

M. was discharged by the insolvent laws of Pennsylvania, after having made, according to the requirements of the law, an assignment of "all his estate, property and effects, for the benefit of his creditors;" after his discharge, he presented a petition to congress for a compensation for extra services performed by him as United States gauger, before his petition for his discharge by the insolvent law. As gauger, he had received the salary allowed by law; but the services for which compensation was asked, were performed in addition to those of gauger, by regauging wines, which had become necessary by an act of congress, reducing the duties charged upon them; congress passed an act, giving him a sum of money for those extra services: *Held*, that the assignee, under the insolvent laws, was entitled to receive from the treasury of the United States, the amount so allowed. Comegys *v.* Vasse, 1 Pet. 196; United States *v.* Macdaniel, 7 Ibid. 1; United States *v.* Fillebrown, Ibid. 50; Emerson *v.* Hall, 13 Ibid. 409, cited.[1]

Appeal from the Circuit Court of the District of Columbia and county of Washington. The appellants, Milnor and Thompson, were, during the years 1836 and 1837, United States gaugers for the port of Philadelphia, and as such received the full compensation allowed by law for that period. The duties having been rendered unusually laborious during the year, by the operation of the act of July 4th, 1836, reducing the duties on wines, under which they were required to regauge them; they appealed to congress for extra compensation, to the amount of their full ordinary fees for these additional services. Their memorial to congress was presented in January 1838; and in May 1840, an act was passed for their relief, by which the sum of "$2757.23, being the amount of fees due to them for extra services as gaugers in the port of Philadelphia, after the passage of the act of 4th July 1836, reducing the duty on wines." George W. Metz made no claim before congress. as the assignee of Robert Milnor.

In December 1838, the appellant, Robert Milnor, applied, at *Philadelphia, for the benefit of the insolvent laws of Pennsylvania; [*222 and he was discharged in January 1839, having executed the usual assignment for the benefit of his creditors. The appellee, George W. Metz, was duly qualified, and became the sole assignee. After the act of 1840 had passed, he applied at the treasury department, claiming the amount of the sum allowed by the same to Robert Milnor, being one-half of the whole sum allowed; the other portion belonging to John Thompson. This application

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[1] S. P. Mayer *v.* White, 24 How. 317; Phelps *v.* McDonald, 99 U. S. 298.