of the same term of the said Circuit Court, cancel and deliver up the notes and securities given for the payment of any and every portion of the excess over and above the said $20,000. And this court doth further order, adjudge, and decree, that the said defendants do pay the costs in this court upon this appeal, and all the costs which have accrued in this cause in the said Circuit Court, or which may accrue therein, in carrying out the decree of this court. And this court doth further order, adjudge, and decree, that this cause be, and the same is hereby, remanded to the said Circuit Court, with instructions to carry this decree into effect, and with power to make all such orders and decrees as may be necessary for that purpose.

JAMES PHALEN, PLAINTIFF IN ERROR, *v.* THE COMMONWEALTH OF VIRGINIA.

In 1829, the legislature of Virginia passed an act appointing five commissioners to raise by way of lottery or lotteries the sum of $30,000 for the benefit of the Fauquier and Alexandria Turnpike Road Company. Two of the commissioners declined to act, and the remaining three took no steps to execute the power for a long time. On the 25th of February, 1834, the legislature passed an act for the suppression of lotteries, which prohibited all lotteries and sale of lottery-tickets after the 1st of January, 1837, saving, however, contracts already made which were by their terms to extend beyond the 1st of January, 1837, or contracts hereafter to be made under any existing law, which were to extend beyond that day. These were permitted to go on until the 1st of January, 1840. On the 11th of March, 1834, the legislature passed an act appointing two commissioners in the place of the two who had declined to act. On the 19th of December, 1839, these commissioners entered into a contract with certain persons, authorizing these persons to draw as many lotteries as they might think proper, without limitation as to time, upon the payment of a certain sum per annum to the commissioners.

Held, 1. That the right to draw lotteries under the act of 1829 was not a contract the obligations of which were impaired by the act of 1834.

2. That it may be doubted whether it constituted a contract at all; but that if is was a contract, it was not unlimited as to time, and the act of 1834, allowing the grant to continue *for a certain time, stood upon the [*164 same ground as acts of limitation and recording acts, which this court has said a state has a right to pass.

3. That the privilege granted by the act of 1829 had become obsolete from non-user, and the act of 1834, appointing two commissioners, did not fully revive it, because the two acts of 1834 must be taken together; and the limitation contained in one must apply to the other.[1]

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[1] It is an elementary principle in the interpretation of written law, that statutes *in pari materia* are to be construed together. *United States* v. *Collier*, 3 Blatchf., 325; *Alexander* v. *Mayor, &c.*, 5 Cranch, 1; *The Elizabeth*, 1 Paine, 10; *United States* v. *Harris*, 1 Sumn., 21; *United States* v. *Hewes*, Crabbe, 307; *Black* v. *Scott*, 2 Brock., 325; *Dubois* v. *McLean*, 4 McLean, 489; *Patterson* v. *Winn*, 1 Wheat., 385, 6; *Chandler* v. *Lee*, 1 Idaho, 349.

In construing any particular section

4. That the courts of Virginia have so construed these statutes, and this court adopts their construction.[2]

THIS case was brought up by a writ of error to the General Court of Virginia. The plaintiff in error had been convicted in the Superior Court for the County of Henrico and City of Richmond, on an indictment for selling lottery-tickets contrary to the act of Assembly of Virginia, passed on the 25th of February, 1834. The case was removed by writ of error to the General Court of Virginia, where the judgment was affirmed. That being the highest court of criminal jurisdiction in Virginia, the plaintiff in error brought his case into this court by a writ of error under the twenty-fifth section of the Judiciary Act; and now alleged that the act of 25th February, 1834, under which he was convicted, is void, being contrary to the tenth section of the first article of the Constitution, which forbids a state to pass any "law impairing the obligation of contracts."

On the trial of the case below, the jury found a special verdict, setting forth at length the several acts of Assembly of Virginia, and the contract under which the defendant in the enactment claimed a right to sell lottery-tickets and to be exempted from the penalties of the act of February, 1834, under which he was indicted.

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of any statutes forming a part of the system of practice, if it be intricate, obscure or doubtful, its meaning is to be ascertained by comparing it with the other sections, or parts, in the light of the general legislative intent disclosed by the whole system, with respect to the section or part questioned. *Levy* v. *Loeb*, 44 Superior (N. Y.), 291; *affirmed*. 75 N. Y., 609.

The latter of two inconsistent sections of one and the same statute must prevail. *Ryan* v. *State*, 5 Neb., 276; *Gibbons* v. *Brittenum*, 56 Miss., 232; *Albertson* v. *State*, 9 Neb., 429.

Where two distinct statutes conflict the one last enacted must prevail. *Swinney* v. *Fort Wayne &c. R. R. Co.*, 59 Ind., 205; *State* v. *Jersey City*, 11 Vr. (N. J.), 257; *Lehman* v. *Robinson*, 59 Ala., 219.

Where one statute refers to another one for the power given by the former, the statute referred to will be deemed to be incorporated in the one making the reference. *Nunes* v. *Wellisch*, 12 Bush (Ky.), 363. If the statute thus referred to has been amended, the amendments, though not mentioned, will also be incorporated. *Matter of Mundy* v. *Excise Comm'rs*, 9 Abb. (N. Y.), N. C., 117.

In construing a statute effect must be given, if practicable, to all of the language employed, and inconsistent expressions are to be harmonized, if possible, to reach the real intent of the legislature. *Matter of New York and Brooklyn Bridge*, 72 N. Y., 526, 530.

[2] The highest court of a state is the supreme authority in the interpretation of the statutes of the state. *Lamborn* v. *County Comm'rs*, 7 Otto, 181; *Davie* v. *Briggs*, Id. 628, 637.

The construction placed upon the statute of another state by the courts of that state is, as a general rule, controlling, and will be followed by the courts of this state. *Jessup* v. *Carnegie*, 80 N. Y., 441. *It seems*, however, that where a statute has been construed by the courts of the state whose legislature enacted it, and obligations have been entered into on the faith of such decisions, a subsequent decision giving a different construction will not control as to such prior transactions. *Ib.*

It appears that in December, 1828, the President and Directors of the Fauquier and Alexandria Turnpike Road presented a petition to the Legislature of Virginia, setting forth the importance and value of their road to the public; that by the exertions of the directors and a few of the stockholders, and on their responsibility, money had been raised, and the road put in excellent condition, except three miles, which required much repair; and asked a law authorizing a lottery to raise $30,000.

On the 30th of January, 1829, the Legislature passed an act appointing five commissioners, "whose duty it shall be to raise, by way of lottery or lotteries, the sum of $30,000, for the purpose of improving the Fauquier and Alexandria Turnpike Road." After directing the commissioners to contract with fit persons for managing the lotteries, and to take bonds for the faithful performance of their duties, they are ordered to "pay over to the President and Directors of the said Fauquier *and Alexandria Turnpike Road [*165 Company," the money raised by said lotteries, "to be by them appropriated in the improvement and repair of said road."

Two of the commissioners appointed by this act declined acting under it, and nothing was done under the license or authority granted therein during the five years which intervened between that time and the passage of the act of the 25th of February, 1834, for the suppression of lotteries.

This act prohibits, under severe penalties, all lotteries and sale of lottery-tickets after the first day of January, 1837, with these provisos:—1st. "That nothing herein contained shall be construed to extend to or interfere with *contracts already made* for the drawing of any lotteries, the drawing whereof, by the provisions of such contracts, shall extend to a period beyond said first day of January, 1837;" and 2d. "That nothing herein contained shall be construed to extend to or interfere with any contract which may hereafter be made under or by virtue of any existing law authorizing the same, for the drawing of any lottery, the drawing whereof shall not extend beyond the first day of January, 1840."

A few days after the passage of this act, on the 11th of March, 1834, an act was passed appointing two commissioners in place of those who had declined, "to carry into effect the act of 30th of January, 1829."

Nothing was done under these acts till the 19th of December, 1839, when the commissioners entered into a contract with the plaintiff in error and another, authorizing them to draw as many lotteries as they think proper, paying to the

commissioners the sum of $1,500 a year, with covenants to increase the consideration, provided the Legislature of Virginia should pass an act exempting these lotteries from the penalties of the act of February, 1834, or if this court should pronounce the act of 1834 unconstitutional.

It is by virtue of this contract with the commissioners, that the plaintiff in error claims immunity; contending, "that the act of 1829 confers a valuable right or franchise on an existing corporation, without limitation of time; that it is a contract; and that the act of 1834 has attempted to limit and curtail the previous grant, and injuriously to abridge it, and is therefore void, as impairing the obligation of a contract."

The case was argued by *Mr. Z. Collins Lee*, for the plaintiff in error, no counsel appearing for the defendant.

The points made by him were the following:

That this court has jurisdiction on this writ of error, *166] because *the decision in the General Court involved the construction of a clause in the Constitution, and the decision was against the title or right specially set up or claimed under such clause of the Constitution.

That the act of 1829 (sec. 10) confers a valuable right or franchise on an existing corporation, to wit, the Fauquier and Alexandria Turnpike Company, duly incorporated by the act of Virginia.

This grant of the right to raise the sum of $30,000 is unconditional, and without limitation of time, requiring only the action of the commissioners; and the law contemplated on its face the raising of the money by lotteries, from time to time, and confers the power on the commissioners to make just such contracts as they think proper. The legislature, in its sovereignty, could do this. 4 Gill & J. (Md.), 150.

The state had no power to revoke this grant, because,—

1. It is presumed to be accepted by the turnpike company, without proof. 12 Wheat., 70–72; Angell & A. Corp., 89, &c.

2. Special verdict shows, that the law passed on petition of the president and directors; and, moreover, that, relying on the terms of this grant, the company did, prior to the 25th of February, 1834, enter into contracts, and incur debts, to be paid out of this lottery. This vested an interest in the corporation. 11 Gill & J. (Md.), 504.

3. The state is as much bound by her contracts, express or implied, as an individual. 4 Pet., 560; 4 Gill & J. (Md.), 128; 9 Id., 404, 405; 6 Cranch, 128. That this law of 1829 is a contract, see also 9 Cranch, 49; 2 Hayw. (N. C.), 310; 1 Murph. (N. C.), 58; 11 Pet.; 9 Gill & J. (Md.), 408.

4. The act of 25th February, 1834, impairs the rights vested under the previous contract.

The second proviso in this act excepts all contracts thereafter made, by virtue of any existing law for the drawing of lotteries, not extending beyond the 1st of January, 1840. See *Green* v. *Biddle*, 8 Wheat., 1; 3 Wash., 319.

Yet if the contract under which this lottery was drawn be duly authorized, in all its terms and duration, by the act of 1829, then the act of 1834 has attempted to limit and curtail the previous grant, and injuriously to abridge it.

But the act of 11th March, 1834, appointed two commissioners in place of those who had resigned, and therefore there could be no drawing until the vacancies were filled under the act of 1829.

Hence the law of 11th March, 1834, which is subsequent *to the penal law of 25th February, 1834, [*167 appoints two commissioners to fill the vacancies and to carry the law of 1829 into effect; thus furnishing a legislative declaration, that the act of 1829 was to be carried into effect. But the law of February, 1834, only allows time to carry the act of 1829 into effect until the first day of January, 1837.

5. The contract was made in a reasonable time after the act of 11th March, 1834, and was duly authorized by law in all its terms and duration; and the penalty sought to be enforced under the act of February, 1834, (which directly prohibits *all lotteries* after the 1st of January, 1840,) is not to be enforced, because it would violate the antecedent contract, made by the state in 1829.

Mr. Justice GRIER delivered the opinion of the court.

It might admit of some doubt whether the act of 1829 grants any franchise, or constitutes any contract, either with the commissioners therein appointed, or with the turnpike corporation. It imposes certain duties on each. The commissioners are required to use the license thus given, not for their own benefit, but for a public purpose. The money procured by the proposed lotteries is to be paid over to the Fauquier and Alexandria Turnpike Road Company, to be by them expended "in the improvement and repair of the road."

It is true, that the corporation might receive greater benefits from the repair of the road than the other citizens of the state; but the act imposed no duty on them as a previous consideration. They are not required to make any repairs till they receive the money.

But assuming that this would be too narrow a construction of this act, and that it conferred a privilege or benefit on the

corporation in the nature of a franchise or irrevocable contract, yet in its very nature it could not be considered illimitable as to time. On the contrary, the object for which the license was granted called for immediate action. "Three miles" of a great public thoroughfare are represented to be out of repair, and the company without immediate means to effect it. The sum to be raised being fixed and finite, and the subject of its application demanding immediate attention, the time within which the license is given cannot claim to be unlimited. And yet the commissioners and corporation have suffered eleven years to pass, before any attempt is made to perform the duty imposed on them, or avail themselves of the license or franchise conferred, and now claim a further term of twenty years, to raise the money and repair the road.

*168] *When the legislature of Virginia passed this most salutary act for the suppression of lotteries, they, with commendable caution, protected all vested rights. And notwithstanding the neglect to perform the duties imposed by the act of 1829, the act of 1834 does not revoke the grant or annul the license, but limits the time to six years within which the duties must be performed and the privilege exercised.

It has been often decided by this court, that the prohibition of the Constitution now under consideration by which state legislatures are restrained from passing any "law impairing the obligation of contracts," does not extend to all legislation about contracts. They may pass recording acts, by which an elder grantee shall be postponed to a younger, if the prior deed be not recorded within a limited time; and this, whether the deed be dated before or after the act. Acts of limitation also, giving peace and confidence to the actual possessor of the soil, and refusing the aid of courts of justice in the enforcement of contracts, after a certain time, have received the sanction of this court. Such acts may be said to effect a complete divesture, or even transfer, of right, yet, as reasons of sound policy have led to their adoption, their validity cannot be questioned.

What is the act under consideration, but a limitation of the time within which a certain privilege or license, limited in its very nature and purpose, may be exercised? If reasons of sound policy justify legislative interference with contracts of individuals, how much more will it justify the limitation of licenses so injurious to public morals.

The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the

wide-spread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple.[1]

It is a principle of the common law, that the king cannot sanction a nuisance. But, without asserting that a legislative license to raise money by lotteries cannot have the sanctity of a franchise or contract in its nature irrevocable, it cannot be denied that the limitation of such a license as the present is as much demanded by public policy, as other acts of limitation which have received the sanction of this court.

There is, also, another view of this case, which concludes *the plaintiff in error from the benefit of a [*169 defence under this clause of the Constitution, even if it were tenable. The act of 1829 had become obsolete by non-user. Without further legislation, the license granted by it could not be exercised. The plaintiff in error cannot claim a right to sell lottery-tickets without invoking the aid of the act of 11th March, 1834, passed a few days after the "act suppressing lotteries." The courts of Virginia have very properly decided, that "this dormant right to draw the lottery which was revived by the act of March, 1834, must be taken as subordinate to and limited by, the act of the 25th of the previous month; that those statutes must be taken *in pari materia*, and receive the same construction as if embodied in one act; that there is nothing repugnant in the provisions of the one to those of the other, where the first is taken as limiting the time within which the right under the second is to be exercised."

This construction of their statutes by the courts of Virginia is not only just and correct, but is conclusive on this court and on the case, as it estops the plaintiff in error from averring against the constitutionality of the limitation under which he claims his privilege.

The judgment of the General Court of Virginia is, therefore, affirmed, with costs.

Order.

This cause came on to be heard on the transcript of the record from the General Court of Virginia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said

[1] QUOTED. *Stone* v. *Mississippi*, 11 Otto, 818.

General Court of Virginia in this cause be, and the same is hereby, affirmed, with costs.

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*170] *THOMAS H. MCCLANAHAN, ADMINISTRATOR OF WILLIAM J. MCCLANAHAN, DECEASED, COMPLAINANT AND APPELLANT, *v.* RICHARD DAVIS, WILLIAM D. NUTT, ADMINISTRATOR OF GEORGE COLEMAN, DECEASED, ELIZABETH BLACKLOCK, THE WIDOW AND RELICT OF NICHOLAS F. BLACKLOCK, DECEASED, NICHOLAS F. BLACKLOCK THE YOUNGER, JANE LOWE, LATE JANE BLACKLOCK, DAVID LOWE, HER HUSBAND, AND ELIZABETH FOX, LATE ELIZABETH BLACKLOCK, THE SAID NICHOLAS F. THE YOUNGER, JANE, AND ELIZABETH BEING THE CHILDREN OF THE LATE NICHOLAS F. BLACKLOCK THE ELDER, DECEASED, DEFENDANTS.

The assent of an executor must be obtained before a legatee can take possession of a legacy. But this assent may be implied, and an assent to the interest of the tenant for life in a chattel inures to vest the interest of the remainder. Therefore, where a bill averred the possession of the subject of the legacy by the life-tenant in pursuance of the bequest in the will, and this bill was demurred to, it is sufficient to raise a presumption that the possession was taken with the assent of the executor.[1]

By the laws of Virginia, where there is a tenancy for life in a slave, with remainder to the wife of another person, the interest of the husband in the wife's remainder is placed upon the footing of an interest in a chose in action. If, therefore, he survives the wife, he may reduce the property into possession at the expiration of the life estate; but if he be dead at such expiration, the property survives to the wife, and on her death passes to her legal representative as part of her assets.

Query, whether the husband or his personal representative is not bound to administer upon the wife's estate, before bringing suit to recover property so situated in the state of Virginia.

Where there was no direct or positive averment that the defendants, or either of them, had any interest in the property claimed, or that it was in their possession, no ground of relief against those parties was shown, and the right to a discovery as incidental thereto, failed also.[2]

THIS was an appeal from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Alexandria, and sitting as a court of equity.

The object of the bill was to reclaim the possession of cer-

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[1] Where the property bequeathed is allowed to pass into the possession of the legatee, and remain in his possession for a long time, the presumption of assent will attach. *Whorton* v. *Morange*, 62 Ala., 201; and such assent cannot be arbitrarily revoked. *Eberstein* v. *Camp*, 37 Mich., 176.

[2] S. P. *Hurst* v. *Hurst*, 2 Wash. C. C., 127.