the voluntary action of many of those persons affected by the laws under consideration; nor, on the other hand, of the hardships which they are now suffering, much more as a consequence of that action than of any laws which Congress can possibly frame. But I have endeavored to bring to the examination of the grave questions of constitutional law involved in this inquiry those principles alone which are calculated to assist in determining what the law is, rather than what, in my private judgment, it ought to be.

BARROWS *v.* KINDRED.

Although when statute abolishing its fictitious forms places the action of ejectment on the same footing with other actions, as to the conclusiveness of the judgment, the court will give effect to the same; yet where a plaintiff in ejectment is defeated in one suit, where he claimed through a power of attorney rightly ruled out on the trial as void, he will not be held to be concluded in a subsequent action where he claims under a new deed made by the executors themselves. Having acquired a new and distinct title, he has the same right to assert it, without prejudice from the former suit, as a stranger would have had it passed to him.

ERROR to the Circuit Court of the United States for the Southern District of Illinois; the case being thus:

The statute of Illinois regulating the action of ejectment abolishes all fictions. Its twenty-ninth section provides that "every judgment in the action of ejectment rendered upon a verdict shall be conclusive as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through, or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter named," exceptions not material to be noticed. With this statute in force, the plaintiff in error brought an action of ejectment against the defendant in error in the court below, and upon the trial produced a chain of title, consisting of a patent

from the United States to Whitney, a deed from Whitney to Vose, the will of Vose, and a deed *from his executors* to the plaintiff. *This deed was dated March* 18*th*, 1861.

The validity of these several links was not denied. They made the chain of title complete, and *primâ facie* entitled the plaintiff to recover the premises in controversy.

The defendant, thereupon, gave in evidence the record of a judgment relating to the same premises—rendered in a former action of ejectment—wherein the plaintiff in error was the plaintiff, and James R. Gordon was defendant. The judgment was in favor of the latter. *This suit was begun on the* 12*th June*, 1858, *and ended June* 5*th*, 1859.

The defendant also proved that he was in possession as the tenant of Gordon; that in the former action set forth in the record in question the plaintiff, Barrows, gave in evidence the same patent from the United States to Whitney, the same deed from Whitney to Vose, a power of attorney from the executors of Vose to S. A. Kingsley, authorizing him to sell and convey the premises, a deed from the executors *by Kingsley as their attorney in fact*, to Scroggs, and a deed from Scroggs to the plaintiff. *This power of attorney from the executors, and the deed executed by Kingsley, were ruled out as void.*

The defendant proved, further, that the deed from the executors of Vose to the plaintiff was given upon the same consideration as the former deed by their attorneys in fact to Scroggs.

The evidence being closed, the plaintiff asked the court to charge the jury, that the record and evidence relating to the former trial constituted no bar to his right to recover in this action. This the court refused to do, and thereupon charged that the record in connection with the evidence did constitute a bar. The jury found accordingly for the defendant.

To the admission of each of the several parts of this evidence, to the refusal of the court to charge as asked, and to the charge given, the defendant excepted.

The correctness of these instructions was the question now before this court.

Argument for the conclusiveness.

Mr. Grimshaw, for the plaintiff in error:

In the first action, the plaintiff was beaten; because, after deducing title in fee from the government to Vose, he failed to trace title from Vose to himself; because—in point of fact, as we may here state—Vose's executors, who had power to sell, had delegated it without authority of law to an attorney, who had conveyed to the plaintiff. And in the second action plaintiff was again beaten, after he had acquired title directly from the executors, subsequent to the judgment in first suit, because he had been beaten in the first suit for want of title, when he commenced the first action.

The present plaintiff was properly defeated in the first suit, because, although he traced title from the government to Vose, he failed to trace it to himself.

In the second suit, by title acquired from Vose, through his executors, who had power to convey, he showed title in himself, acquired after the former judgment, and regularly derived from the government through Vose to himself.

He should not be defeated in the first suit, because when he brought that suit he had *no title*, and then defeated in this suit, because, after the first suit had terminated, he acquired a paramount legal title.

The trial, as far as the plaintiff is concerned, relates to the state of title as it existed in plaintiff when he brought his suit. If he fails in his suit, defendant goes "without day;" but no title is *established* by plaintiff's defeat.*

Mr. Browning, contra:

The statute has given to the judgment in ejectment the same conclusive effect that other judgments have. Similar statutes exist in a number of the States, and many cases decided under them may be referred to.†

* Smith *v.* Sherwood, 4 Connecticut, 279; Easten *v.* Rucker, 1 J. J Marshall, 234.

† Miles *v.* Caldwell, 2 Wallace, 44; Blanchard *v.* Brown, 3 Id. 245; Gibson *v.* Manly, 15 Illinois, 140; Frazer *v.* Weller, 6 McLean, 12; Beebe *v.* Elliot, 4 Barbour, 457; Marvin *v.* Dennison, 1 Blatchford, 160; Edwards

The object of the statute is to put an end to litigation, and give repose to society by preventing the same precise question from being twice litigated between the same parties or their privies; and, in applying the statute, the court looks to the *claim* of the party and the *issue joined* upon it, and not to the accidents of the trial, to determine whether the first judgment is a bar to the second suit.

Here the plaintiff is the same; the defendant in the second suit is the tenant of the defendant in the first suit; the land sued for is the same; the interest claimed in it the same; the plea the same; putting the title, and that only, in issue in both suits.

The *title*, therefore, was the thing in issue; and the rule is, that when a matter is once put in issue, the verdict and judgment, whilst they stand, estop the parties from retrying the same issue.

And the effect is the same, whether the parties were prepared for trial or not. The force of the judgment, as an estoppel, is in no degree impaired by the failure of the plaintiff to produce evidence to support his claim.*

Mr. Justice SWAYNE delivered the opinion of the court.

The question of error in the instructions given by the court is the hinge of the controversy between the parties. The statute of Illinois regulating the action of ejectment abolishes all fictions. The twenty-ninth section provides that "every judgment in the action of ejectment rendered upon a verdict shall be conclusive as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through, or under such party, by title accruing after the commence-

v. Roys, 18 Vermont, 478; Sims *v.* Smith, 19 Georgia, 124; Wood *v.* Jackson, 8 Wendell, 35; Hall *v.* Dodge, 38 New Hampshire, 351; Chamberlain *v.* Carlisle, 26 Id. 540.

* Marriott *v.* Hampton, 7 Durnford & East, 269; Bateman *v.* Willoe, 1 Schoales & Lefroy, 204; Le Guen *v.* Governeur & Kemble, 1 Johnson's Cases, 495; White *v.* Ward, 9 Johnson, 232; Grant *v.* Button, 14 Id. 377; Gaines *v.* Hennen, 24 Howard, 621–22; Outram *v.* Morewood and Wife, 3 East, 346; Eastmure *v.* Laws, 5 Bingham's New Cases, 451.

ment of such action, subject to the exceptions hereinafter named."

It is not claimed that the exceptions referred to affect this case.

Where a judgment is rendered for the plaintiff, the title upon which he recovered is thereby established, and the construction and effect of the statute are obvious. He must recover in all cases, if at all, upon the strength of his own title, and not upon the weakness of his adversary's. It is not incumbent upon the defendant to show any title. Where a plaintiff shows no title, and is therefore defeated, it is not easy to perceive how any title can be said to have been established in the action, or how, under the statute, the result can affect his right to bring a new action for the same premises. We are not advised of any authoritative interpretation of the statute, in this aspect, by the courts of Illinois. If one were shown we should follow it. But, in the view which we take of this case, it may be conceded that the judgment has the same effect upon the parties, and those in privity with them, as a judgment in a common-law action. As a general proposition, such a judgment is a bar to any future litigation between the parties, and all claiming under them, touching the subject involved in the controversy. It is conclusive of their rights, and shuts the door to further inquiry. This is an elementary principle of all civilized jurisprudence. It has been, and will be, applied in this court upon all proper occasions. It is a principle of repose, and fruitful of good. When the legislature of any State has seen fit to divest the action of ejectment of its ancient characteristics, and to place it upon the same footing with other actions, we have not failed to give full effect to the legislative intent by maintaining the conclusiveness of the judgment, as in other cases.

But, in our judgment, this principle has no application to the case before us.

The suit between Barrows and Gordon was commenced on the 12th of June, 1858, and terminated on the 5th of June, 1859.

The deed from the executors of Vose to Barrows bears date on the 18th of March, 1861. Upon the trial of the case of *Barrows* v. *Gordon* the power of attorney from the executors and the deed executed by Kingsley were properly ruled out as void. They were not in the case. Barrows had no title to the premises in controversy, and judgment was given against him. This may be admitted to be conclusive as to his want of title at that time, and, whether the decision of the court as to the power of attorney and the deed made under it was erroneous or not, it would have been a bar to another action attempted to be maintained upon the same state of facts. But this did not deprive Barrows of the right to acquire a new and distinct title; and, having done so, he had the same right to assert it, without prejudice from the former suit, which would have accompanied the title into the hands of a stranger. At the termination of that suit the executors had not passed the title to any one. They did not transfer it for more than a year afterwards.

How, then, can it be said to have been involved in or in anywise affected by the prior litigation? The plaintiff could no more be barred than any other person who might have subsequently acquired the title. In refusing to instruct, and in instructing, as appears by the record, the court committed an error.

The judgment is therefore reversed, with costs, and the cause will be remanded to the court below, with directions to proceed

IN CONFORMITY WITH THIS OPINION.

UNITED STATES *v.* HATHAWAY.

Staves for pipes, hogsheads, and other casks, the growth and produce of the province of Canada, imported in November, 1863, from Canada into the United States, were not free from duty under the reciprocity treaty of 1854 between the United States and Great Britain, by which "timbers and lumber of all kinds, round, hewed, and sawed, unmanufac-