tended to disregard this distinction in its legislation, even were that practicable, as it was not.

My conclusion is that the judgment of the court below was erroneous, and should be reversed.

THE DISTILLED SPIRITS.

1. The acceptance by the collector of a false and fraudulent bond given for the removal of distilled spirits from a bonded warehouse, will not prevent a forfeiture of such spirits under the 45th section of the Internal Revenue Act of July 13th, 1866, which forfeits "distilled spirits found elsewhere than in a bonded warehouse, not having been removed therefrom according to law."
2. The removal will be illegal if effected by means of a false and fraudulent bond.
3. The 48th section of the Internal Revenue Act of June 30th, 1864, as amended by the act of 1866, which forfeits "all goods, wares, merchandise, articles or objects," if found in possession of any person in fraud of the internal revenue laws, &c., is applicable to distilled spirits notwithstanding the forfeiture of spirits is provided for in a distinct series of sections relating thereto in the same law, or in a supplementary law.
4. All the sections can stand together; and where that is the case one does not repeal or supersede the other, as repeals by implication are not favored.
5. The rule that notice to the agent is notice to the principal applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction and present to his mind at the time he is acting as such agent, provided it be of such a character as he may communicate to his principal without breach of professional confidence.
6. Where distilled spirits forfeited to the United States are mixed with other distilled spirits belonging to the same person (ignorant of the forfeiture) they are not lost to the government by such mixture, either on the principle of confusion of goods, or transmutation of species, even though subsequently run through leaches for the purpose of rectification. The government will be entitled to its proportion of the result.

IN error to the Circuit Court for the District of Massachusetts; the case being this:

The 48th section of the Internal Revenue Act of June

30th, 1864,* as amended by an act of July 13th, 1866, enacts that

"All goods, wares, merchandise, articles or objects, on which taxes are imposed by the provisions of law, which shall be found in the possession, or custody, or within the control of any person or persons in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized, &c., and shall be forfeited to the United States."

The 45th section of this later act† enacts that

"All distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax imposed by law not having been paid, shall be forfeited."

By the 42d section of the same act a penalty is imposed on persons executing any false and fraudulent bond or other document for the purpose, among other things, of withdrawing from any bonded warehouse any *spirits* or other merchandise, or which shall be used in fraud of the internal revenue laws. By this section the property is forfeited and the party executing the document made liable to imprisonment.

The act of 1864 contained no specific provisions for the forfeiture of distilled spirits. The act of 1866 in certain sections (that is to say, in sections from 40 to 45) made provisions about them, including cases in which the government would be entitled to a forfeiture of such spirits. One section, the 40th, enacted that distilled spirits when inspected might be removed, under bond, without payment of tax, from the bonded warehouse of the distiller to any general bonded warehouse. Another, the 41st, that spirits or other merchandise might be removed from bonded warehouse for the purpose of being exported. Another, the 42d, already quoted, makes penal the making of any false bond or other document to evade payment of the tax; an-

* 13 Stat. at Large, 223. † 14 Id. 163.

other, the 43d, that owners of distilled spirits intended for sale, manufactured before the date of the act, should give notice to the collector to gauge and prove them; another, the 44th, that forfeited spirits should be disposed of by the commissioner of internal revenue; and another, the 45th, as already mentioned, that all distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax unpaid, should be forfeited.

With these various provisions on the statute-book, the United States filed an information stating that the collector of internal revenue at Boston, in April, 1867, had seized 278 barrels of distilled spirits as being forfeited by removal from a bonded warehouse without paying the tax due thereon.

The *first* count of the information was founded on the 45th section of the act of July 13th, 1866, and alleged that the spirits were found elsewhere than in a bonded warehouse, not having been removed therefrom according to law, and the taxes not having been paid.

The *second* and *third* on the 48th section of the act of June 30th, 1864, as amended by act of July 13th, 1866, and alleged that the spirits were in the possession of one Harrington, for the purpose of being sold in fraud of the internal revenue laws, and with design to avoid the payment of taxes.

Subsequently, Harrington appeared and claimed 124 of the barrels, and a certain Boyden the remainder; and they pleaded that none of the goods became forfeited as alleged in the information, and that the allegations therein were not true. Issue was taken on each of these pleas. It appeared in proof, that in April, 1867, a large quantity of spirits were withdrawn from the United States bonded warehouses in Boston upon the pretence of an intent to transport the same to Eastport, Maine, for exportation thence. False and fraudulent bonds were given therefor, and the spirits were never attempted to be transported to Eastport, but were removed for consumption and sale in Boston and its vicinity, and the

taxes were not paid. The government contended that the spirits seized were parcel of this lot, and that the claimants were parties to, or cognizant of, the fraud. The claimants contended that part of the spirits in controversy were not a portion of the spirits fraudulently withdrawn, but were from different and distinct lots, and that the spirits claimed by Harrington had been rectified in leaches in which various lots were mixed, including, possibly, some of the lot fraudulently withdrawn, which it was impossible to identify. They further claimed that the spirits were bought in open market without knowledge of the fraud, and that such of the fraudulent lot as Harrington had bought, he had bought through Boyden as his agent. Evidence was given on both sides, tending to prove these several points.

The claimants requested the court to instruct the jury as follows:

"1. That if the spirits had been deposited in a United States bonded warehouse, and had been removed therefrom upon application to the collector of the district in which they were situate, and by his authority, for rectification or transportation for exportation, they are not liable to forfeiture.

"2. That if the said spirits had been removed from a United States bonded warehouse, upon application to the collector of the district, and upon the furnishing of bonds which were satisfactory to and accepted by him, and upon permission thereupon granted by the collector, and were seized before the expiration of the time allowed for rectification or transportation, the spirits are not liable to forfeiture.

"3. That if the said spirits had been removed from a United States bonded warehouse according to the forms of law, viz., upon application made in due form to the collector for leave to withdraw, and upon bonds being given in the prescribed form, and permission thereupon given in due form for their removal, and said spirits had been bought by the claimants of the party withdrawing, or his agent, without knowledge of the fact that the bonds were worthless, or that said spirits were removed from the warehouse with intent to defraud the government, they are not liable to forfeiture.

"4. That if a portion of the spirits proved in this case not to

have paid a tax had passed through the rectifiers in which there were other spirits, and so become mixed with them, no portion of the spirits, when rectified, would be liable to forfeiture."

The court declined to give the first and second of these instructions, but gave the third, with this qualification, that if Boyden bought the spirits as agent for Harrington, and Boyden was cognizant of the fraud, Harrington would be bound by his knowledge.

It declined to give the fourth instruction as prayed for, and instead of it instructed the jury that:

"If the rectified spirits came from vats and rectifiers in which the spirits so fraudulently withdrawn, or any portion, were mixed with other lots of similar spirits of the claimants, so that they could not be distinguished, the government were entitled to the forfeiture of a fair proportion of these spirits, although the mixture might have been innocently made, provided the jury were satisfied of such facts as would, under the instructions of the court, forfeit the spirits so fraudulently withdrawn if they had not been so mixed; and if the jury were satisfied of such facts, and also found the spirits so fraudulently withdrawn were mixed with other similar spirits of the claimants by them fraudulently, with knowledge of the fraud committed, for the purpose of destroying the identity of the spirits and defrauding the government, and were so mixed that they could not be distinguished and identified, that the entire quantity of this mixture seized was forfeited to the United States."

To the above rulings, and refusals to rule, the claimants took exceptions. The jury found against 50 barrels, claimed by Harrington, and all those claimed by Boyden; and the court decreed accordingly. On appeal to the Circuit Court, that court affirmed the decree. The case was now here on error.

Mr. R. M. Morse, Jr., for the claimants:

The question raised by the refusal of the presiding judge to give the *first* and *second* instructions prayed for by the claimants is, whether, upon the facts conceded by the gov-

ernment, the latter were entitled to a forfeiture *under either of the sections of the statute under which the information was framed.*

We submit that upon the facts conceded by the government, the forfeiture could be had only under section 42, on which, however, no count in the information is founded.

It will be noticed that the act of June 30th, 1864, contained no specific provisions for the forfeiture of distilled spirits. Under the act, therefore, all proceedings for forfeiture of spirits must have been brought under section 48. But the act of July 13th, 1866, provides in sections 40 to 45, inclusive, for all cases where the government would be entitled to a forfeiture of spirits. Hence, to give proper effect to these sections, which else would be meaningless, it must be assumed that section 48 of the act of 1864, as amended by the act of 1866, was intended to apply not to all goods, but to all goods except those for which specific provision was made in the subsequent sections. If this view is correct, then the counts under section 48 of the act of 1864, as amended, cannot be maintained.

The *third* and *fourth* prayers relate to the issues of fact submitted to the jury.

The questions of fact in controversy were:

1st. Whether the claimants, or either of them, were parties to the fraudulent withdrawal of the spirits from the warehouses.

2d. Whether they were cognizant of it.

3d. Whether the spirits seized were a part of the spirits fraudulently withdrawn.

4th. Whether they had been mixed with other liquors and then rectified; and,

5th. Whether such mixture, if made, was innocently or fraudulently made.

The fair inference from the verdicts, taken in connection with these instructions, is, that the jury found that Boyden was cognizant of the fraud, but not that he was a party to it, and that Harrington had no knowledge of the same; and that some part, if not the whole, of the spirits seized could

not be identified with the spirits originally withdrawn from the warehouses in violation of law.

We consider first the *third* prayer for instruction, which had relation only to the claim of Harrington.

The only question to be considered is, whether the knowledge of the agent at any time obtained and not communicated to the principal, is to be held to be the knowledge of the principal so as to subject to forfeiture under a severe penal statute, merchandise liable to forfeiture, by the terms of the act itself, only when the principal has knowledge of the fraud.

There is some conflict in the authorities upon this point; but the weight of authority establishes the rule to be, that the principal is not affected by the knowledge of the agent, unless the knowledge is acquired by the agent while in the employ of the principal and in the course of the very transaction in which he is employed. This doctrine was laid down in 1729, in *Fitzgerald* v. *Fauconberge*.* In *Lowther* v. *Carlton*,† Lord Hardwicke said:

"If a counsel or attorney is employed to look over a title, and if by some other transaction, foreign to the business in hand, has notice, this shall not affect the purchaser."

The doctrine was affirmed by the same judge in *Warrick* v. *Warrick*,‡ and in *Worsley* v. *Earl of Scarborough*;§ by Lord Erskine in *Hiern* v. *Mill*,‖ and by Lord Eldon in *Mountford* v. *Scott*.¶ In *Kennedy* v. *Green*,** Lord Brougham held that a client was not to be held cognizant of a fraud, *although his solicitor was the contriver and actor in the same*, because the solicitor's knowledge was not obtained in the course of his employment for that client.

In the United States the weight of authority is in support of the same doctrine.††

* Fitzgibbon, 211. † 2 Atkins, 242. ‡ 3 Id. 294. § Ib. 392.
‖ 13 Vesey, Jr. 120. ¶ 3 Maddock, 34.
** 3 Myne & Keene, 699; see also Wilde *v.* Gibson, 1 House of Lords Cases, 605.
†† Farmers' and Citizens' Bank *v.* Payne, 25 Connecticut, 444; Bank of United States *v.* Davis, 2 Hill, 452; New York Central Ins. Co. *v.* National

In England, however, it has been held that when one transaction is clearly followed by and connected with another, or *when it is clear* that a previous transaction is present to the mind of the agent when engaged in another transaction, there is no ground for the distinction by which the rule that notice to the agent is notice to the principal had been restricted to the same transaction.* But this relaxation of the rule has not generally obtained in the United States. The courts of Vermont, New Hampshire, South Carolina, Alabama, and Illinois are the only ones that have supported it; and in none of the decisions of these States does it appear that the American authorities were examined.

But even if the court should adopt the modification of the rule, as stated in *Hargreaves* v. *Rothwell* and *Dresser* v. *Norwood*, yet the instruction was wrong, as it failed to give the qualification which is held in those cases to be essential to affect the principal with the prior knowledge of his agent, to wit: that it must appear that the previous transaction is present to the mind of the agent when engaged in another transaction, or that one transaction is clearly followed by and connected with another so that that fact may necessarily be inferred.

The fourth instruction prayed for applies to the case of both claimants.

Both the prayer for instructions and the instruction of the presiding judge in the District Court assumed that the spirits were mixed with other spirits in the rectifiers, so that they could not be distinguished. The case being one of a loss of identity of the original offending spirits, we submit

Prot. Ins. Co., 20 Barbour, 468; Brown *v.* Montgomery, 6 Smith, New York, 287; Jackson *v.* Sharp, 9 Johnson, 163; Hood *v.* Fahnestock, 8 Watts, 489; Bracken *v.* Miller, 4 Watts & Sergeant, 111; Winchester *v.* Baltimore Railroad Co., 4 Maryland, 231; United States Insurance Co. *v.* Shriver, 3 Maryland Ch. 381; Willis *v.* Vallette, 4 Metcalfe, 186; Keenan *v.* Missouri Ins. Co., 12 Iowa, 126; Bierce *v.* Red Bluff Hotel, 31 California, 160.

* Hargreaves *v.* Rothwell, 1 Keen, 158; Lenehan *v.* McCabe, 2 Irish Eq. 342; Fuller *v.* Benett, 2 Hare, 394; Dresser *v.* Norwood, 17 C. B., N. S. 466

that neither the new species nor any part of it is liable to forfeiture, and this whether the mixture was innocently made or for the purpose of destroying the identity.

Mr. B. G. Bristow, Solicitor-General, and Mr. C. H. Hill, Assistant Attorney-General, contra.

Mr. Justice BRADLEY delivered the opinion of the court.

The claimants insist, in the first place, that no recovery can be had under the information on the conceded facts of the case. The information contained three counts relied on: one on section 45 of the act of July 13th, 1866, and two on section 48 of the act of June 30th, 1864, as amended by act of July 13th, 1866. The first-named section declares that "all distilled spirits found elsewhere than in a bonded warehouse, not having been removed from such warehouse according to law, and the tax imposed by law not having been paid, shall be forfeited." The first count charges that the spirits in question were thus found. It is insisted that they were removed according to law.

We do not think that a removal procured by a false and fraudulent bond, though accepted by the collector, was a removal according to law, and we fail to perceive how the spirits which were thus withdrawn from the bonded warehouse can be exempted from the operation of this section.

The other section, on which the second and third counts were framed, declares that "all goods, wares, merchandise, articles or objects, on which taxes are imposed by the provisions of law, which shall be found in the possession, or custody, or within the control of any person or persons in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized, &c., and shall be forfeited to the United States." It is insisted that this section does not apply to distilled spirits, inasmuch as they are provided for in a different part of the act by a distinct series of sections.

An examination of the act of 1864 will show that the first fifty-two sections are of a general character, intended to

apply to all taxes imposed by the act, and that the 48th section is especially of that character, and applies to distilled spirits as well as all other articles. By the act of 1866 this section was amended in a manner not material to the question at issue. When thus amended it still stood as it did before, having the same office and the same general application. The addition in the act of 1866 of several new sections relating to the removal of distilled spirits from a bonded warehouse, and imposing penalties and forfeitures for giving fraudulent bonds for that purpose, or for illegally removing the spirits, does not deprive the 48th section of the act of 1864 of its general application. There is nothing incongruous or repugnant between it and the new sections. Both can stand, and an information may be founded on both or either, whenever the facts will admit. It is a very common thing for cumulative remedies to be thus provided. The act of 1868, which revises the entire revenue law relating to spirits and tobacco, furnishes a striking instance of this. After providing for a large number of specific forfeitures, or forfeitures for specific breaches of the law, it follows up the subject by sections of the most general nature, so framed as not to admit of any possible escape or evasion, and which necessarily include most of the cases before specifically provided for. Statutes *in pari materia*, like the acts of 1864 and 1866, are to be construed together, and repeals by implication are not favored if the acts can reasonably stand together.

The other points made by the claimants relate to the charge given by the court to the jury. Passing over the first and second instructions prayed for, which are not insisted on, and are not tenable if they were, the third and fourth demand attention. The substance of the third instruction prayed for was, that if the spirits were removed from the warehouse according to the forms of law, and the claimants bought them without knowledge of the fraud, they were not liable to forfeiture. The court charged in accordance with this prayer with this qualification, that if Boyden bought the spirits as agent for Harrington, and was

cognizant of the fraud, Harrington would be bound by his knowledge. The claimants insist that this is not law.

The question how far a purchaser is affected with notice of prior liens, trusts, or frauds, by the knowledge of his agent who effects the purchase, is one that has been much mooted in England and this country. That he is bound and affected by such knowledge or notice as his agent obtains in negotiating the particular transaction, is everywhere conceded. But Lord Hardwicke thought that the rule could not be extended so far as to affect the principal by knowledge of the agent acquired previously in a different transaction.* Supposing it to be clear, that the agent still retained the knowledge so formerly acquired, it was certainly making a very nice and thin distinction. Lord Eldon did not approve of it. In *Mountford* v. *Scott*,† he says: "It may fall to be considered whether one transaction might not follow so close upon the other as to render it impossible to give a man credit for having forgotten it. I should be unwilling to go so far as to say, that if an attorney has notice of a transaction in the morning, he shall be held in a court of equity to have forgotten it in the evening; it must in all cases depend upon the circumstances." The distinction taken by Lord Hardwicke has since been entirely overruled by the Court of Exchequer Chamber in the case of *Dresser* v. *Norwood*.‡ So that in England the doctrine now seems to be established, that if the agent, at the time of effecting a purchase, has knowledge of any prior lien, trust, or fraud, affecting the property, no matter when he acquired such knowledge, his principal is affected thereby. If he acquire the knowledge when he effects the purchase, no question can arise as to his having it at that time; if he acquired it previous to the purchase, the presumption that he still retains it, and has it present to his mind, will depend on the lapse of time and other circumstances. Knowledge communicated to the principal himself he is bound to recollect, but he is not bound by knowledge communicated to his

* Warrick *v.* Warrick, 3 Atkyns, 291. † 1 Turner & Russell, 274.
‡ 17 Common Bench, N S. 466.

agent, unless it is present to the agent's mind at the time of effecting the purchase. Clear and satisfactory proof that it was so present seems to be the only restriction required by the English rule as now understood. With the qualification that the agent is at liberty to communicate his knowledge to his principal, it appears to us to be a sound view of the subject. The general rule that a principal is bound by the knowledge of his agent is based on the principle of law, that it is the agent's duty to communicate to his principal the knowledge which he has respecting the subject-matter of negotiation, and the presumption that he will perform that duty. When it is not the agent's duty to communicate such knowledge, when it would be unlawful for him to do so, as, for example, when it has been acquired confidentially as attorney for a former client in a prior transaction, the reason of the rule ceases, and in such a case an agent would not be expected to do that which would involve the betrayal of professional confidence, and his principal ought not to be bound by his agent's secret and confidential information. This often happened in the case of large estates in England, where men of great professional eminence were frequently consulted. They thus became possessed, in a confidential manner, of secret trusts or other defects of title, which they could not honorably, if they could legally, communicate to subsequent clients. This difficulty presented itself to Lord Hardwicke's mind, and undoubtedly lay at the bottom of the distinction which he established. Had he confined it to such cases, it would have been entirely unexceptionable.

The general tendency of decisions in this country has been to adopt the distinction of Lord Hardwicke, but it has several times been held, in consonance with Lord Eldon's suggestion, that if the agent acquired his information so recently as to make it incredible that he should have forgotten it, his principal will be bound. This is really an abandonment of the principle on which the distinction is founded.* The case

* Story on Agency, § 140; Hovey *v.* Blanchard, 13 New Hampshire, 145; Patten *v.* Insurance Co., 40 Id. 375; Hart *v.* Farmers' & Mechanics' Bank, 33 Vermont, 252

of *Hart* v. *Farmers' and Mechanics' Bank*,* adopts the rule established by the case of *Dresser* v. *Norwood*. Other cases, as that of *Bank of United States* v. *Davis*,† *New York Central Insurance Co.* v. *National Protection Co.*,‡ adhere to the more rigid view.§

On the whole, however, we think that the rule as finally settled by the English courts, with the qualification above mentioned, is the true one, and is deduced from the best consideration of the reasons on which it is founded. Applying it to the case in hand, we think that the charge was substantially correct. The fair construction of the charge is, that if the jury believed that Boyden, the agent, was cognizant of the fraud at the time of the purchase, Harrington, the principal, was bound by this knowledge. The precise words were "that if Boyden bought the spirits as agent for Harrington, and Boyden was cognizant of the fraud, Harrington would be bound by his knowledge." The plain and natural sense of these words, and that in which the jury would understand them, we think, is that they refer to Boyden's knowledge at the time of making the purchase. Thus construed the charge is strictly in accordance with the law as above explained. There was no pretence that Boyden acquired his knowledge in a fiduciary character.

This result is arrived at independent of the question whether an innocent purchaser without notice can, in any case, claim precedence of the title of the United States arising by forfeiture. It has frequently been held that he cannot do so in cases of statutory forfeitures ensuing from acts done or omitted.‖ But as this point was not argued or raised we do not put the case upon it.

We see no error in the fourth instruction given. It needs

* 33 Vermont, 252. † 2 Hill, 452. ‡ 20 Barbour, 468.

§ See cases collected in note to American edition of 17 Common Bench, N. S., p. 482, and Mr. Justice Clifford's opinion in the Circuit Court in the present case.

‖ United States *v.* Grundy, 3 Cranch, 338; Same *v.* 1960 Bags of Coffee, 8 Cranch, 398; Fontaine *v.* Phœnix Insurance Company, 11 Johnson, 293; Kennedy *v.* Strong, 14 Id. 128; The St. Jago de Cuba, 9 Wheaton, 416; The Florenzo, 1 Blatchford & Howland, 60.

no learned examination of the doctrine of confusion or mixture of goods to make it apparent that if certain spirits belonging to the government by forfeiture are voluntarily mixed with other spirits belonging to the same party and passed through the process of rectification in leaches, he cannot thereby deprive the government of its property; and if the government only claims its fair proportion of the rectified spirits, he certainly cannot complain of injustice. The only result of applying the doctrine of confusion of goods would be to forfeit the entire mixture. And it cannot be claimed that the process of rectification in leaches effects such a transmutation of species as to destroy the identity of the liquor. If, after the mixture and before the rectification a certain proportion of the spirits belongs to the United States, they will not lose that proportion by the spirits being passed through the leaches for the purpose of rectification.

JUDGMENT AFFIRMED.

BANK *v.* LANIER.

1. National banks as governed by the National Currency Act of June 3d 1864, which act repeals the National Currency Act of 1863, can make no valid loan or discount on the security of their own stock, unless necessary to prevent loss on a debt previously contracted in good faith.
2. The placing by one bank of its funds on permanent deposit with another bank, is a loan within the spirit of this enactment.
3. Loans by National banks to their stockholders do not give a lien to the bank on the stock of such stockholders.
4. A bank whose certificates of stock declare the stockholder entitled to so many shares of stock, which can be transferred on the books of the corporation, in person or by attorney, when the certificates are surrendered, *but not otherwise*, and which suffers a stockholder to transfer to anybody on the books of the bank his stock, without producing and surrendering the certificates thereof, is liable to a *bonâ fide* transferee for value, of the same stock, who produces the certificates with properly executed power of attorney to transfer; and this is so although no notice have been given to the bank of the latter transfer.

IN error to the Circuit Court for the District of Indiana; the case being thus: