less found they could not do; but on the same day they applied for the writ of attachment, which was issued and served on the following day. No other persons in Cairo could have known of the shipment of the corn, or Sherwood, Karns & Company's connection with it, and it is idle to suppose the marshal would have made the levy without the special instructions of the plaintiffs in the suit. Besides, it was their interest to keep their proceedings as secret as possible, for fear the officers of the boat might get knowledge of them and avoid landing at Cairo. But this is not all, for they told Booth that they attached the corn, and the marshal paid them the net proceeds of the sale of it. Surely nothing more is necessary to show that the levy and sale were at their instance, and there is no evidence at all to the contrary.

These views dispose of the case, and the judgment is accordingly

AFFIRMED.

STEINBACH *v.* STEWART ET AL.

1. A decree of the District Court of the United States confirming a claim to land under a Mexican grant in California contained a proviso that the confirmation to the claimant should be without prejudice to the rights of the legal representatives of the original grantee, or whoever might be entitled to the land under him, and should enure to the benefit of any person, or persons, who might own or be entitled to the land by any title, either at law or in equity, derived from the original grantee by deed, devise, descent, or otherwise. On appeal to the Supreme Court the decree, so far as it confirmed the original grant, was affirmed: *Held*, that this language of the Supreme Court did not annul the proviso to the decree, but left it in full force; and that the decree accordingly gave to parties holding under the original grantee or the confirmee the same benefits which it gave to them in the perfection of their title.
2. In August, 1846, the confirmee, V., executed an instrument, and delivered it to one H., wherein he uses these words, after certifying that he had purchased the tract of land designated of the original grantee:

   "I grant and transfer all the right which I have in the land mentioned to H., who shall make such use thereof as may be most convenient to him;"

   Held, that the instrument, construed by the Mexican law in force in Cali-

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fornia at the time of its execution, was a conveyance of all V.'s title, and not a mere license to H. to occupy the land.

3. In a deed of land from H. to D., the premises were described as "one mile square of land, English measure, containing six hundred and forty acres, situated, lying, and being in the district of Sonoma, and being part and parcel of all that certain tract of land called Agua Caliente, formerly taken up by Lazaro Peña, by a grant from the government." When this deed was offered in evidence it was shown that the grantee, D., at the time of his purchase from his grantor, H., took possession of the tract thus conveyed, and occupied it, and that all the subsequent grantees under him, of whom there were several, at the date of their respective conveyances took possession of the same tract and remained in the open and notorious possession of the same until they parted with their respective interests; *Held*, that the deed, accompanied by this evidence of identification and occupation of the land, was properly admitted.

4. The statements of a grantor of land, made after he has conveyed the land to others, are inadmissible to invalidate his deed.

ERROR to the Circuit Court for the District of California.

This was an action of ejectment for a tract of land situated in the State of California. Issues having been joined the case was called on for trial before a jury, and evidence was introduced by the respective parties. After all the evidence on both sides was concluded, the attorneys of the parties who had appeared in the action stipulated that the jury should be discharged, and that the issues be tried and determined by the court. The jury were accordingly discharged, and the facts established were substantially as follows: On the 14th day of October, 1839, one Lazaro Peña presented a petition to the commandant general of the department of California for a grant of land situated in the present county of Sonoma, in that State, known by the name of Agua Caliente, of which land Peña had been years previously in the possession; and the commandant gave to him a provisional concession of the land until he should petition the government for the proper title. Afterwards, on the 13th day of October, 1840, Peña obtained a grant of the land from Alvarado, then governor of the department of California, and on the 8th day of October, 1845, this grant was approved by the Departmental Assembly. Pending the

proceedings to obtain the grant the petitioner, Peña, sold and conveyed all his interest in the land to one M. G. Vallejo. Subsequently, March 2d, 1853, Vallejo presented a petition to the board of land commissioners, created under the act of March 3d, 1851, for a confirmation of his claim under the grant. By the board his claim was rejected; but afterwards, on appeal, the District Court of the United States for the Northern District of California confirmed his claim. The decree of confirmation was entered on the 13th July, 1859, and was accompanied by the following proviso:

"Provided, that this confirmation of the above land to the said M. G. Vallejo shall be without prejudice to the rights of the legal representatives of Lazaro Peña, the original grantee, or whoever may be entitled to said lands under him; and said confirmation to said Vallejo shall enure to the benefit of any person or persons who may own or be entitled to said land by any title, either at law or in equity, derived from the original grantee by deed, devise, descent, or otherwise."

Afterwards, on appeal to the Supreme Court of the United States, this decree was affirmed *in so far as it confirmed the original grant.* The tract thus confirmed embraced the premises in controversy.

On the 17th of January, 1863, Vallejo, for the consideration of $3000, sold and conveyed his interest in the entire tract to the plaintiff Steinbach, and the deed was duly recorded under the laws of California in the recorder's office of the county. On the 5th of February, 1864, Vallejo executed for the like consideration a second deed of the same premises, which was also duly recorded in the same office.

Four of the defendants, namely, G. W. Whitman, Martha C. Watriss, C. V. Stewart, and J. B. Warfield, claimed each a portion of these premises under Vallejo, through an instrument executed by him to one Andres Hoeppener, on the 12th of August, 1846. The original was in Spanish, and was indorsed on the espediente of Peña. The following is a correct translation of the document:

"The undersigned certifies that he legitimately and formally

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purchased from the citizen Lazaro Peña the tract of land of the 'Agua Caliente,' to which the preceding approval of the Departmental Assembly of Alta California has reference. I grant and transfer all the right which I have in the land mentioned to Don Andres Hoeppener, who shall make such use thereof as may be most convenient to him. And for the necessary purposes and uses I give this, at Sonoma, this 12th day of August, 1846.

"M. G. VALLEJO.

"Witness:

"A. A. HENDERSON,
"J. P. LEESE."

It was at the time admitted that Peña had previously executed a deed of the tract to Vallejo, bearing date December 4th, 1839, and that at the time the deed from Vallejo to Hoeppener was executed Hoeppener received full possession of the premises from Vallejo, and continued thereafter in the possession until the land was sold by him.

The counsel for plaintiff objected to the reception of this document in evidence, on the ground that the same did not convey any estate from Vallejo to Hoeppener, but was a mere license to occupy, which terminated and was extinguished when Hoeppener asserted title to or attempted to convey the lands; which objection was overruled by the court and the evidence admitted, to which ruling an exception was duly taken.

The counsel for the defendants then, on the part of the defendant, Whitman, offered in evidence a deed from Hoeppener to Carlos Glein, dated December 1st, 1847, together with various mesne conveyances, by which the title acquired by said Glein had passed to and vested in said Whitman. In the deed from Hoeppener to Glein the land intended to be conveyed is described as follows:

"All that certain tract and parcel of land containing three hundred acres, more or less, being a portion of the rancho named Agua Caliente, as transferred to the said Andres Hoeppener by M. G. Vallejo; the said three hundred acres being more particularly bounded and described as follows, to wit: On the west side by Sonoma Creek, on the east side by the Napa

Hills, on the north by Yeltan's farm, and on the south by the land of Ernest Rufus."

The defendants' counsel then proved, on the part of the defendant Whitman, that Glein, at the time of his purchase from Hoeppener, took possession of the tract thus conveyed (and which is the same tract held and possessed by Whitman), and that said Glein, together with all his successive grantees, including Whitman, at the date of their respective conveyances, paid a valuable consideration therefor, and took possession of the tract, and remained in the open and notorious possession of the same until they parted with their interests therein; but that Whitman had never parted with his interest therein; and that, at the date of the conveyance from Vallejo to Steinbach of his interest in the Agua Caliente rancho, he (Whitman) was in the open and notorious possession of the tract, claiming to own the same.

The plaintiff's counsel objected to the admission of this deed in evidence, because it did not import to convey the title to any particular tract of land; that it created no legal estate, and was therefore incompetent evidence to prove any issue made in this action, and was irrelevant and immaterial.

The court overruled the objection and admitted the evidence; to which ruling of the court exception was duly taken.

The counsel for the defendants then, on behalf of the defendant Watriss, offered a deed from Hoeppener to J. J. Dopken, dated November 14th, 1846, together with various mesne conveyances, by which the title acquired by the said Dopken had passed to and vested in the said Watriss. In the deed from Hoeppener to Dopken the land intended to be conveyed is described as follows:

"One mile square of land, English measure, containing 640 acres, situated, lying, and being in the district of Sonoma, and being part and parcel of all that certain tract of land called Agua Caliente, formerly taken up by Lazaro Peña, by a grant from the government and lately purchased from the said Lazaro Peña by M. G. Vallejo, and granted by the said M. G. Vallejo

unto the aforesaid Andrew Hoeppener, together with all and singular the advantages, profits, privileges, and appurtenances whatsoever, right, title, and interest of the said Hoeppener, of, in, and to the same, belonging or in any way pertaining."

The defendants' counsel then proved, on the part of the defendant Martha C. Watriss, that Dopken, at the time of his purchase from Hoeppener, took possession of the tract thus conveyed (and which is the same tract held and possessed by the said Martha and described in her answer), and that Dopken, together with all his successive grantees, including the said Martha, at the date of their respective conveyances, took possession of said tract and remained in the open and notorious possession of the same until they parted with their interests therein, but that Martha had never parted with her interest therein; and that, at the date of the conveyances from M. G. Vallejo to Steinbach of his interest in the Agua Caliente rancho, the said Martha was in the open and notorious possession of the tract, claiming to own the same.

To the admission of which deed the counsel for the plaintiff objected that the said deed, by reason of the indefiniteness of the said description, was insufficient to convey title or to create any legal estate; and that it was therefore irrelevant, immaterial, and inadmissible; which objection the court overruled and admitted the deed in evidence, *in connection with the testimony as to the occupation of the particular premises*, to which ruling an exception was duly taken.

After the defendants had closed their testimony, the plaintiff's counsel offered to prove, by statements made by Hoeppener in 1848, that Hoeppener and Vallejo agreed that Hoeppener should teach Vallejo's family music, for which Vallejo was to convey him the rancho; that in the meanwhile Hoeppener was to occupy it; that neither Hoeppener nor Vallejo intended or considered the said instrument as a conveyance, or more than a license to occupy; that Hoeppener did not perform his agreement, but, after part performance, abandoned it, and admitted that he had no claim to the land. All which took place in the year 1847–1848.

The court refused to receive any testimony as to statements of Hoeppener subsequent to the date of his conveyances to others, and excluded the testimony; to which ruling of the court an exception was duly taken.

The plaintiff also proved that he paid to Vallejo for the two deeds received from him, as above mentioned, a valuable consideration at the time, and that he made the purchase of the land and received the deeds without knowledge or notice actual or constructive of any other conveyances of the premises or of any interest therein by Vallejo, except as given by the actual, open, and notorious possession and occupation of the defendants, G. W. Whitman, Martha C. Watriss, J. B. Warfield, and C. V. Stewart, as above stated.

He also proved that previous to the year 1857 Hoeppener, above mentioned, died intestate and without issue, leaving a widow, Anna Hoeppener, who was his sole heir; that on the 17th of May, 1858, the said Anna, by a deed executed and delivered, for a valuable consideration sold and conveyed to J. L. Green the tract of land known as Agua Caliente, and which deed was recordrd on the 10th of July, 1863, in the proper recorder's office; and that Green, on the 2d day of January, 1864, by a deed duly executed and delivered, for a valuable consideration sold and conveyed the same property to the plaintiff, and that the deed was also properly recorded on the 22d day of October, 1864.

The court gave judgment in favor of the four defendants above named, for the land which they severally had purchased and occupied, and in favor of the plaintiff against all the other defendants, except those against whom the action had been dismissed. From this judgment the case was brought here on writ of error sued out by the plaintiff.

Mr. J. Wilson, for the plaintiff in error; Messrs. E. O. Wheeler and C. T. Botts, contra.

Mr. Justice STRONG delivered the opinion of the court.

The record exhibits five assignments of error, all founded upon exceptions taken in the court below to the admission

or rejection of evidence. Of these the first is, in substance, that the court permitted the defendants to give in evidence what it is contended constituted at most only an equitable right, and what was, therefore, no defence against the legal title asserted by the plaintiff. The exception cannot be understood without a brief examination of the titles under which each of the parties claimed the lands in controversy.

The title of the plaintiff had its origin in a provisional concession made by the Mexican government to Lazaro Peña on the 14th day of October, 1839. Peña was then in possession of the land, and the concession was made to him with the reservation that he should petition for the usual title from the political government. On the 13th day of October, 1840, he obtained a grant in the usual form from Don Juan B. Alvarado, then governor of the department of California, for the land then known by the name of "Agua Caliente," embracing the land now in dispute, and on the 8th of October, 1845, the grant was approved by the Departmental Assembly. Before it was made, however, though after the provisional concession, Peña conveyed all his interest in the land to Mariano G. Vallejo. In 1853 Vallejo instituted proceedings, under the act of Congress of March 3d, 1851, for a confirmation of the land to him, and it was confirmed by the District Court in 1859. The decree of confirmation contained the following proviso: "Provided that this confirmation of the above land to the said M. G. Vallejo shall be without prejudice to the rights of the legal representatives of Lazaro Peña, the original grantee, or whoever may be entitled to said lands under him; and said confirmation to said Vallejo shall enure to the benefit of any person, or persons, who may own or be entitled to the said land by any title, either at law or in equity, derived from the original grantee by deed, devise, descent, or otherwise." The record of the confirmation was subsequently brought into this court by appeal, and here it was adjudged that the decree of the District Court, in so far as it confirmed the original grant, be affirmed. It was under this decree of confirmation that the plaintiff claimed, both through

a deed of Anna Hoeppener, sole heir of Andres Hoeppener, an alleged grantee of Vallejo, dated December 21st, 1858, and secondly, by a deed dated January 17th, 1863, from Vallejo himself.

The defendants asserted ownership of the parcels of the rancho "Agua Caliente," now in controversy, under an alleged grant made by Vallejo to Andres Hoeppener, dated August 12th, 1846, about ten months after the grant to Peña had been approved by the Departmental Assembly.

It thus appears that both parties claimed under Peña and Vallejo, and a brief examination will show that the nature of their titles was the same. If that of the plaintiff was a legal estate (which it is not necessary to this case to decide), that of the defendants was equally so. That the right of Vallejo on the 12th of August, 1846, when he conveyed the property to Hoeppener, was not perfect, must be conceded. His claim had not been confirmed, and he had no patent. He had nothing but the Mexican espediente. Of course the right which he conveyed was also imperfect. But when afterwards the District Court confirmed the land to him, the confirmation enured to the benefit of his prior grantee. It was not the acquisition of a new title, but the establishment of his original right. And this was expressly decreed by the proviso already quoted. By that it was adjudged that the confirmation should enure to the benefit of any person or persons who owned, or were entitled to the land by any title in law or in equity, derived from the original grantee by deed, devise, descent, or otherwise. If, therefore, Hoeppener or his grantees held any such title, it was confirmed to them as truly as if he or they had been petitioners for such confirmation. Now, it is in virtue of this decree of the District Court that the plaintiff claims. He has no standing without it. Asserting his rights through it, the law will not permit him to repudiate any part of its provisions.

It is argued, however, that the proviso to the decree of confirmation was annulled by the action of this court. To this we do not assent. The judgment upon the appeal was that the original grant to Lazaro Peña was a good and valid

grant, and that the decree of the District Court, in so far as it confirmed the original grant, be itself affirmed. This was no reversal of any portion of the decree of the District Court. On the contrary it left that decree in full force to all its extent. And by relation it was carried back to the inception of the title confirmed. It is a well-settled rule that where several acts concur to make a complete conveyance the original act is preferred, and all others relate to it.* Mr. Cruise, in his work on Real Property,† says, "There is no rule better founded in law, reason, and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act, and operate from the substantial part by relation." The proviso was, therefore, nothing more than a declaration of what would have been the legal effect of the decree without it. If, therefore, as is insisted by the plaintiff, the confirmation vested in Vallejo the legal title, it at the same time vested a legal estate in the grantees of Vallejo, or Peña, who held portions of the land under conveyances from the confirmees.

The second exception taken in the court below is, that the court received in evidence an instrument of writing, dated August 12th, 1846, claimed by the defendants to be a grant of the land by Vallejo to Andres Hoeppener, and this is the basis of the second assignment of error. The bill of exceptions shows that the execution of the instrument was duly proved, that it was indorsed upon the espediente to Peña, that at the time when the deed was made Hoeppener received full possession of the land from Vallejo, and that he continued thereafter in such possession until the land was sold by him. It is argued that the deed was only a license to occupy, and not a grant of the land, hence that it was revocable at will, conferring a mere tenancy-at-will and not a legal estate. Certainly it is a very informal instrument, and were the rules of the common law to be applied to it there would be difficulty in maintaining that it was a grant of the fee.

* Viner's Abridgment, 290; Relation. † Vol. 5, pp. 210–11.

It is to be noted, however, that its character and effect are to be determined by Mexican law. It was made before California had been ceded to the United States. In inquiring what was the intention and effect of the instrument we are not, then, to be guided by the rules of the common law or by the British statute of uses. That it was more than a license to occupy is plain. Its language is, "I grant and transfer (*cedo y transparo*) all the right which I have in the land mentioned, to Don Andres Hoeppener, who shall make" (or have) "such use thereof as may be convenient to him." These are not words of mere license. They describe the subject of the grant, not as a possessory right, but as "all the right" of the grantor "in the land." Full effect cannot be given to all the words of the instrument unless it is held to be a conveyance of all Vallejo's title. If the intent had been to transmit less, why describe the subject as all right in the land? It is argued that the words following the operative words of transmission to Hoeppener, viz.: "who shall make such use thereof as may be most convenient to him," indicate that no more than a license to occupy was intended. They do not appear to us to warrant any such inference. They, or other words of like import, are common in Mexican grants which have been held to be conveyances of the entire estate of the grantors.* In the latter case the effect of such clauses is considerably discussed. Instead of being words of limitation or restriction, they seem rather intended to confer the largest dominion. And in our law they have been held to enlarge into a fee, a devise which, without them, would have been only a life estate.

If there were any doubts respecting the deed, whether it was intended as a grant or a license, they would be dispelled by noticing the construction manifestly given to it by the parties. This is an aid that may always be called in when the meaning of a contract is ambiguous.† There was no

* *Vide* Hayes *v.* Bona, 7 California, 154; Havens *v.* Dale, 18 Id. 362; and Mulford *v.* Le Franc, 26 Id. 88.

† French *v.* Carhart, 1 Comstock, 102, and cases therein cited; United States *v.* Appleton, 1 Sumner, 502–3.

necessity for reducing to writing a mere license. Yet this contract was in the form of a conveyance, reduced to writing, and indorsed upon the espediente. There was no necessity of livery of seizin if the deed was a mere license, yet Hoeppener was actually put into possession of the land by the grantor, and he or his grantees retained the possession unchallenged, so far as it appears, from August 12th, 1846, until this suit was brought. Vallejo never claimed any right until 1863, when he made a grant to the plaintiff, not of the land, but of "all his right, title, and interest" in it. In addition to all this the plaintiff recognized a possible right in Anna Hoeppener, the heir of Andres Hoeppener, by taking a deed from her grantee, to whom she had conveyed her "right, title, and estate" in the tract of land, in the year 1858. These facts tend strongly to show that the parties understood Vallejo's deed as conveying to Hoeppener absolute ownership of the land described in it.

It is insisted, however, that even if the intent was to convey the land, instead of mere license to occupy it, the instrument was ineffectual, because informal. It is said that it did not contain all the requisites of a valid Mexican grant. It is doubtful whether this point was made in the court below. It does not distinctly appear in the bill of exceptions that it was urged as an objection to the admission of the deed. The objection appears rather to have been that Hoeppener obtained by the deed a mere license, which terminated when he asserted title to the land, or attempted to convey it. Such was the reason stated for the objection in the bill tendered by the plaintiff. But assuming that it is presented for our consideration, we are of opinion the deed contains all that was necessary to constitute an operative grant. That it was executed and delivered, and that, in pursuance of it, Hoeppener was put into possession by the grantor, are facts that are not controverted. This is all that, under the civil law, is necessary to transfer titles. Livery of seizin is the controlling fact. Admitting that, under the Mexican law, a contract in writing was necessary to a private conveyance, it is nevertheless true that the form of the instrument was not

material. Any form would answer that manifested an intent to convey. Here were words of grant (*cedo y transparo*). The word *cedo* (I grant) is the ordinary word used in Mexican conveyance to pass title to lands.* Though the earlier cases in California asserted that the consideration or price of the grant must be mentioned in the written contract, or, at least, that it must be mentioned a price was paid, the later cases have asserted a different doctrine.† It is quite clear that in no case could mention of a price ever have been deemed necessary when there was no price—when the transaction was a gift. In such a case a writing without mention of any consideration, coupled with livery of seizin, or delivery of possession, would consummate the transfer. It would answer no good purpose to review the authorities upon this subject. Suffice it to say, that in view of the language of the instrument, of the facts that Vallejo put Hoeppener into possession under it, and that the grantee and his successors in the title remained in unchallenged possession for more than seventeen years before this suit was brought, we are constrained to hold that it amounted to a conveyance of all right to the lands which Vallejo had.

The third assignment of error is founded upon the third exception taken in the court below. It is, in substance, that the court received in evidence a deed from Hoeppener to Carlos Glein, dated December 1, 1847. It was offered with sundry other conveyances, by which the title conveyed to Glein became vested in Whitman, one of the defendants in error. In the deed from Hoeppener, thus received, the subject of the grant was described as follows: "All that certain tract and parcel of land, containing three hundred acres, more or less, being a portion of the rancho named 'Agua Caliente,' as transferred to the said Andres Hoeppener by M. G. Vallejo, the said three hundred acres being more particularly bounded and described as follows, to wit: On the west side by Sonoma Creek, on the east side by the Napa Hills, on the north by

* Mulford *v.* Le Franc, 26 California, 108.

† Havens *v.* Dale, 18 California, 366; Merle *v.* Mathews, 26 Id. 455.

Yeltan's farm, and on the south by land of Ernest Rufus." In connection with the offer of this deed it was proved that Glein, the grantee, at the time of his purchase, took possession of the tract thus conveyed (the same now held by Whitman), and paid a valuable consideration for it; and that all the succeeding grantees, including Whitman, paid valuable considerations for their grants at the times of their several purchases, and took possession of the land, remaining in open and notorious possession while their interests continued, Whitman still retaining his. It was also proved that when Steinbach, the plaintiff, acquired his title to the Agua Caliente rancho, Whitman was in the open and notorious possession of the tract, claiming to own the same.

To the admission of this deed from Hoeppener to Glein the plaintiff objected, for two reasons assigned at the time. The first of these was, that the deed did not import to convey the title to any particular tract of land; and the second was, that it created no legal estate, and that it was therefore incompetent evidence for any issue made in the action. Neither of these reasons is, in our opinion, well founded. The first rests upon a mistake of fact. We are unable to perceive that there was insufficient certainty in the description of the land granted. It was identified by giving natural boundaries for both its east and west sides, and by calls for adjoining proprietors upon the north and the south. This was enough. In regard to the second reason, we remark that the entire deed is not before us. It is not found in the record, and there is nothing, therefore, to show that it did not convey all the estate which Hoeppener had acquired by the deed to him from Vallejo. If it did not, it was incumbent upon the plaintiff in error to show the fact by exhibiting to us the deed itself. We infer, from the course of the argument, that the objection was intended only to reassert that Hoeppener's title was a mere equity. The worthlessness of that assertion has already been sufficiently considered.

The fourth exception is quite similar to the third. It is that the court received in evidence, against the objection of the plaintiff, a deed, dated November 14, 1846, from Andres

Hoeppener to J. J. Dopken, whose title subsequently passed to Martha C. Watriss, another of the defendants. The deed was for six hundred and forty acres, part of the rancho "Agua Caliente" granted to Peña, confirmed to Vallejo, and conveyed by him, as above mentioned, to Hoeppener. Standing by itself, the deed is indefinite in its description of the land intended to be granted, and an insufficient designation of the subject of the grant. But it was not offered or received alone. It was made, as will be perceived, while the country was under Mexican rule, and its offer was attended by proof of what amounted to livery of seizin—an actual putting of the grantee into possession under it, and a maintenance of that possession from 1846 until 1864, when this suit was brought. It had been admitted, when the deed was received in evidence, that Vallejo had put Hoeppener into possession of the entire rancho, and that Hoeppener continued in possession until he sold to Dopken, when he retired, and allowed his grantee to take possession of the tract sold. This was a parol identification followed by long possession unchallenged. Considering the looseness of Mexican grants at that time, and the acquiescence for so many years of the grantor and all claiming under him, we cannot say that the deed, in connection with this other evidence, was erroneously admitted.

The only remaining assignment of error is, that the court refused to allow the plaintiff to give evidence in rebuttal to prove that, even if the deed shown by the defendants from Hoeppener did make out an equity in his grantees, Hoeppener failed to perform the conditions upon which Vallejo's grant was made to him, upon which the equity rested, and, therefore, that the equity expired.

A few words will dispose of this. If the assignment correctly represented what was the ruling of the court, it would be a sufficient answer to it, that the deed from Vallejo to Hoeppener was unconditional, and, therefore, that his title, and that of his grantees, was not dependent upon the performance or non-performance of conditions. But the court made no such refusal as that of which the plaintiff com-

plains. What the court did rule was, that Hoeppener's statements, made after he had conveyed the land to others, could not be admitted to invalidate his deeds. Surely such a ruling requires no vindication.

Finding no error in the record, the judgment is

AFFIRMED.

LUDLOW *v.* RAMSEY.

1. In a collateral proceeding, to set aside a sale made under a judgment of another court, it must be shown that such court had no jurisdiction of the case. It is not enough to show mere errors and irregularity.

   Hence it is not enough to set aside, in a collateral proceeding, a sale made under the attachment laws of Tennessee, that the affidavit on which the attachment issued did not state, as the code of Tennessee directs that such affidavits should do, that the claim to secure which the attachment process was prayed was "a just claim;" it stating such facts, however, as made the justice of the claim inferable almost as of necessity.

2. The doctrine of *Dean* v. *Nelson* (10 Wallace, 158), that judicial proceedings on a mortgage carried on within the Union lines, against a person driven, by way of retaliation for outrages committed by others, outside of those lines and prohibited from returning within them, does not apply to a person who went and remained voluntarily in rebellion. Such a person cannot complain of legal proceedings regularly prosecuted against him as an absentee.

3. A party had attached, in a State court, the property of a person who had left his home and engaged in the rebellion. Afterwards, on information by the government filed in a District Court of the United States, for confiscation of the property under an act of Congress, the attaching creditor intervened, as the act allowed him to do, to protect his prior right and secure his claim from the proceeds of the forfeited property when sold. The proceedings in confiscation having been terminated by a pardon to the person whose property had been proceeded against, the proceedings in attachment in the State court went on, and a purchaser of the property under them was put into possession by a writ of possession from the State court. *Held*, that whether such writ was issued by the State court in contempt of the Federal one or not was a question which could not be passed upon by a Federal court in a suit by the original owner of the property to set aside as void a sale made under the proceedings in attachment, and that such proceedings could not be