ful analysis of the whole record. It turns in every point upon simple questions of fact. There is not a doubtful question of law involved in the entire record. That this court should be compelled to undergo the labor of finding the truth in such a mass of testimony, a duty much more appropriate to a master, or to some other tribunal than this, and which in common-law cases is peculiarly the province of the jury, is itself a hindrance and obstruction to public justice by the delay which it interposes to the hearing of other cases. We do not feel that this burden should be further increased, and the time of this court, due to other parties and to more important interests, be consumed in writing and delivering opinions which, if they attempt to go into examination of the facts to justify the decision of the court, will be equally tedious and useless.

[The learned justice, without going, in the opinion delivered, into analysis or argument, then stated in a general form, and by way of result, the history of Mann's transactions while cashier and agent of the bank, as the court considered that the same appeared on the evidence; adding that it seemed pretty clear to this court that a certain $20,000 of which Mann had defrauded the bank did become real estate, which was now held in the name of his wife, and announcing in conclusion that as the decree of the court below was founded upon that same view of the case, it was affirmed.]

DECREE ACCORDINGLY.

HENDERSON'S TOBACCO.

1. Although a former statute is impliedly repealed by a subsequent one plainly repugnant to it, or so far as the later statute's making new provisions is plainly intended for a substitute for the earlier one, yet a repeal is not to be implied where the powers or directions under the later acts are such as may well subsist together with those under the earlier.
2. *Held*, on an application of this principle, that the act of July 20, 1868,

Statement of the case.

imposing taxes on distilled spirits and tobacco, did not repeal the proviso to the 25th section of the Internal Revenue Act of March 2, 1867, which limits to twenty days the time for commencing proceedings to enforce forfeitures.

3. But the proviso has no application to any other forfeitures than such as are provided for in it.

IN error to the Circuit Court for the District of Iowa.

This was an information under the act of July 20, 1868,* entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," to enforce a forfeiture, under the revenue laws, of certain caddies of tobacco which had been seized on the 17th of August, 1869, and which were claimed by Henderson & Co. The information contained three counts. The first was, in substance, that since the first day of January, 1868, to wit, from January 1, 1868, to August 17, 1869, the claimants, being the owners of a tobacco factory, with its furniture, manufactured, prepared, and placed in caddies, manufactured leaf tobacco, and sold and removed the same without placing on the caddies the proper revenue stamps, and without having paid the special tax required by law; but that they did place on the caddies of tobacco so manufactured and so sold and removed, half stamps, that is to say, revenue stamps cut in two parts, each part of said stamps being used on separate caddies, and each half stamp so covered by a whole stamp as to make the half stamp so used resemble and be taken for a whole stamp. The second count was for substantially the same offence. The third was for making false and fraudulent entries of the amount of tobacco sold by them annually, and false and fraudulent entries of the quantity manufactured by them, and false and fraudulent reports of their annual sales, in violation of their duty under the law.

The claimants pleaded to this information that it was not filed until more than twenty days after the caddies had been seized by the collector for the alleged violations of law. To the plea there was a demurrer, which was overruled by the

* 15 Stat. at Large, 156, §§ 69 and 70.

court and the information was dismissed. The record was, therefore, supposed to present the question whether proceedings to enforce a forfeiture for such violations of the revenue laws as were charged in the information must be commenced within twenty days from the time of the collector's seizure, and this was the only point argued. The claimants, in support of an affirmative answer to this question, relied upon the proviso to the 25th section of the act of Congress of March 2, 1867,* entitled "An act to amend existing laws relating to internal revenue, and for other purposes." This 25th section enacted that the owner, agent, or superintendent of any still, boiler, or other vessel used in the distillation of spirits, who should neglect or refuse to make true and exact entry and report of the same, or to do, or cause to be done, any of the things by law required to be done concerning distilled spirits, shall, in addition to other fines and penalties by law provided, forfeit for every such neglect or refusal all the spirits made by or for him, and all the vessels used in making the same, and the stills, boilers, and other vessels used in making the same, and all materials fit for use in distillation found on the premises. It also authorized the collector to seize such spirits, vessels, and materials, and hold them until a decision thereon according to law. Then followed this proviso:

"*Provided*, that proceedings to enforce said forfeiture shall be commenced by such collector *within twenty days* after the seizure thereof; and the proceedings to enforce said forfeiture of said property shall be in the nature of a proceeding *in rem* in the Circuit or District Court of the United States for the district where such seizure is made, or in any other court of competent jurisdiction."

The 9th section of the same act enacted that "all proceedings relating to forfeiture and sale of distilled spirits shall apply to tobacco, snuff, and segars."

In answer to this it was contended, on behalf of the United

* 14 Stat. at Large, 483.

States, that the proviso relied upon by the claimants was repealed by the act of July 20, 1868. It was admitted that the act of 1868 contained no words expressly repealing either the act of 1867 or that of 1864, to which the one of 1867 was a supplement; but the argument was that it covered the ground of the preceding statute, and that no limitation was contained in the latter statute with regard to the time in which the proceeding of forfeiture shall be commenced.

There was no doubt that the latter act did change numerous provisions of the former act, and in so far cover its ground. In the sections under which this information was filed there were provisions for the punishment of persons manufacturing tobacco or snuff in violation of the internal revenue laws not in the former acts, and which did not make reference to the proceedings for the punishment of the illegal manufacture of distilled spirits.

The act of 1868 repealed in terms* "all acts and *parts of acts in*consistent" with its own provisions; enacting, however,

"That all the provisions of said act shall be in force for levying and collecting all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts, the right to which has already accrued or which may hereafter accrue under said acts, and for maintaining, continuing, and enforcing liens, fines, penalties, and forfeitures, incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved; and all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the subjects embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed."

This section, it was considered by the government, indicated the broad extent to which the former revenue acts had been revised by the act of 1868, so that Congress considered that penalties under them would be lost without such a saving clause.

* § 105.

There was, however, nothing in the act of 1868 regulating or defining in any way the manner of proceeding in cases of forfeiture, and unless *certain* of the provisions of the previous acts were to be regarded as still in force, there was left apparently no guide, nor statute now in force, in important parts of the revenue practice. These were set forth in different sections among the first fifty-two of the act of 1864; amended by acts of 1866 and 1867. So section 3d of the act of 1867 provided certain rules under which district attorneys were to report certain things to the Commissioner of Internal Revenue. Section 4th placed under the control of the commissioner real estate acquired by the United States under the revenue laws. Section 7th authorized the commissioner to appoint detectives, &c., while section 8th provided a penalty for failure to pay tax when due. No provisions were made on the subject of these sections in the late act.

Mr. B. H. Bristow, Solicitor-General, and Mr. C. H. Hill, Assistant Attorney-General, for the United States; Messrs. McCrary, Miller, and McCrary, contra.

Mr. Justice STRONG delivered the opinion of the court.

It is contended, on behalf of the United States, that the proviso relied upon by the claimants was repealed by the act of July 20, 1868.

If this is so, it was a repeal by implication only. That act contains no words expressly repealing either the act of 1867 or that of 1864, to which the one of 1867 was a supplement. On the contrary, the repealing clause, which it does contain, indicates plainly the intention of Congress to leave in force some portions of former acts relative to the same subject-matter. The 105th section enacts, "that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." This is an express limitation of the extent to which it was intended former acts should cease to be operative, namely, only so far as they are inconsistent with the new act. It is quite inadmissible to engraft upon this express declaration of legislative intent an implication of more

extensive repeal. Statutes are, indeed, sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter acts are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing, manifests a clear intent to abolish the old law. In the *United States* v. *Tynen*,* it was said by Mr. Justice Field, that "when there are two acts upon the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not, in express terms, repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." For this several authorities were cited, some of which have been cited on the present argument. This is, undoubtedly, a sound exposition of the law. But it must be observed that the doctrine asserts no more than that the former statute is impliedly repealed, *so far* as the provisions of the subsequent statute are repugnant to it, or *so far* as the latter statute, making new provisions, is plainly intended as a substitute for it. Where the powers or directions under several acts are such as may well subsist together, an implication of repeal cannot be allowed.†

If now, in the light of these principles, the act of July 20, 1868, be examined and compared with the acts of 1864 and 1867 (the latter being an amendment of the former), there will be found in it nothing inconsistent with the authority given by the amended act of 1867 to the collector to seize and hold property subject to forfeiture, or with the proviso that directs the mode of procedure to enforce forfeitures, designates the courts in which proceedings may be instituted, and limits the time within which they may be com-

* *Supra*, 92.

† Dwarris on Statutes, 674, *et seq.*; Goldson *v.* Buck, 15 East, 877.

menced. It cannot be said that all the powers and limitations mentioned in the proviso may not subsist in entire consistency with everything prescribed in the act of 1868. Undoubtedly, that act was intended to be a revision of former acts relative to spirits and tobacco. And in some particulars it made changes. It introduced new provisions respecting the mode of paying the tax on spirits and tobacco, and it prescribed some new penalties for new offences, but it made no provision respecting the mode of enforcing penalties and forfeitures. It cannot, therefore, have been intended as a complete substitute for all former acts relative to its subject. There are many provisions of the acts of 1864 and 1867 which it left untouched and unsupplied. Indeed, the first fifty-two sections of the act of 1864, amended as they were by the acts of 1866 and 1867, without which the revenue laws cannot be executed, are not attempted to be supplied. There is, therefore, no reason for holding that any other provisions of the acts of 1864 and 1867 have been repealed than such as are plainly inconsistent with the provisions of the act of 1868. There is nothing in this latter act repugnant to the proviso upon which the claimants rely.

But the proviso of the 25th section of the act of 1867, which limits to twenty days the time for commencing proceedings to enforce forfeitures, has no application to any other forfeitures than such as are provided for in that section. Those are, as we have seen, forfeitures for neglect or refusal to make certain true and exact entries and reports, and forfeitures for neglect or refusal to do any of the things by law required to be done concerning distilled spirits (or tobacco). They are forfeitures for acts of omission or neglect. To proceedings to enforce them, the limitation was applied. It was made applicable to no other. The proviso speaks of proceedings to enforce *said* forfeiture, and plainly contemplates no seizure or forfeiture for any different offence than those previously mentioned in the section. This information is founded upon no such neglect or refusal. The forfeiture claimed is for affirmative acts of the claimants; for active offences first made grounds of forfeiture by the

act of 1868. Each count charges positive fraud—the first and second, fraudulent use of stamps, unknown under the act of 1867; and the third count charges fraudulent entries and fraudulent reports. It may well be that a distinction was intended to be made. Passive violations of law, mere neglect, may have been regarded less culpable than active transgression. All the causes of forfeiture enumerated in the sixty-ninth section of the act of 1868, upon which all the counts in the information are based, are of the latter character. We cannot hold, therefore, that the limitation of the proviso to the 25th section of the act of 1867, which the claimants have pleaded, is any protection to them. It follows that the judgment of the Circuit Court dismissing the information must be reversed.

The judgment of the Circuit Court is

REVERSED, AND THE CAUSE IS REMANDED FOR FURTHER PROCEEDINGS.

COOK *v.* BURNLEY.

1. The title of Juan Cano, a colonist in the empressario grant of Martin De Leon, and to whom the commissioner of that colony conveyed a league of land April 11, 1835, was a good title. The case of *White* v. *Burnley* (20 Howard, 235), thus deciding, affirmed.
2. A suit pending in a State court between parties not the same as in a suit here cannot be pleaded in abatement in the Federal courts; nor can a suit pending be pleaded in abatement after a plea to the merits; nor where it is insufficient in law.
3. In the case of a deposition taken *de bene esse* under the 30th section of the Judiciary Act, the omission of the magistrate to certify that he reduced the testimony to writing himself, or that it was done by the witness in his presence, is fatal to the deposition.
4. On a question of limitations and possession, a statement by a witness in a deposition taken *de bene esse* and without notice, that "he knew that the defendant and his tenants had continued possession" from a date specified, held to have been properly excluded, as being testimony to a matter of law and fact mixed; the witness having already testified to the fact of the defendant's possession and of that of his tenants, naming them, and of the time they held possession, and when they left the premises