HOPKIRK *v.* BELL.

Statute of limitations.

The act of limitations of Virginia is no bar to a British creditor's demand on a promissory note, dated 21st August 1772, although one of the plaintiffs was in the country, after the treaty of peace, viz., in 1784, and remained here, until his death in 1785.

THIS case was again certified from the Circuit Court for the district of Virginia.

It appeared upon the trial, in addition to the facts stated in the former report of the case,(*a*) that Andrew Johnston, one of the partners of the house, trading under the firm of Alexander Spiers, John Bowman & Co., of whom the plaintiff was the surviving partner, came to this country, after the treaty of peace in 1783, viz., in the spring of 1784, and died here in 1785, but that no other partner of the firm has been in this country, at any time since the treaty of peace.

C. Lee, for the plaintiff, cited *Ware* v. *Hylton*, 3 Dall. 240, 242, 281.

*February 28th, 1807. THE COURT ordered it to be certified as their opinion, that, under the all circumstances stated, the act of limitations of Virginia was not a bar to the plaintiff's demand on the note of 21st August 1772. [*165

HICKS *et al. v.* ROGERS.

Tenants in common.

In Vermont, tenants in common may maintain a joint action of ejectment.[1]

THIS was a case certified from the Circuit Court for the district of Vermont, the judges of that court(*b*) being opposed in opinion upon the question, whether the plaintiffs, devisees of a tract of land, to be equally divided between them, could, under the will, support a joint action of ejectment. The declaration did not set forth the title of the plaintiffs, otherwise than by the following averment:

"Of which tract or parcel of land, the plaintiffs, on the 6th day of April, in the year of our Lord Christ, one thousand eight hundred and four, were well seised and possessed in their own right, and so continued thereof possessed, until the 8th day of April, in the year last aforesaid, when the defendant, without law or right, and contrary to the will of the plaintiffs, thereinto entered, and ejected, expelled, drove out and amoved the plaintiffs therefrom, and ever since hath, and still doth keep out the plaintiffs from the premises, taking the whole profits to himself, which is to the damage of the plaintiffs, six hundred dollars, to recover which, and the quiet and peaceable possession of the said premises, and just costs, they bring this suit."

(*a*) 3 Cr. 454.

(*b*) The Hon. W. PATERSON, late associate justice of the supreme court of the United States, and the Hon. ELIJAH PAINE, district judge.

[1] So also, in New York, Van Denberg *v.* Bradt, 2 Caines 169. But this is denied to be law in Pennsylvania, by Chief Justice TILGHMAN, in White *v.* Pickering, 12 S. & R. 435, on the authority of the cases there cited. See also, Steinmetz *v.* Nixon, 3 Yeates 285.

Bradley (of Vermont), for the plaintiffs, contended, 1st. That by the common law of Vermont, the words "equally to be divided between them" do not make a tenancy in common, because a tenancy in common is not thereby necessarily implied. Joint heirs, in Vermont, hold as coparceners.

*166] *2d. That if the plaintiffs are tenants in common, yet they have a right, by the common law, to maintain a joint action for an injury to their lands holden in common. (3 Bac. Abr. 216.)

3d. That even if the plaintiffs are to be considered as tenants in common, and could not, by the common law, join in an action to recover possession, yet by the statute of Vermont of 2d of March 1797 (Laws of Vermont, p. 118, § 88), they must join in an action for the mesne profits, or rather no other action is given for the mesne profits, than an action for the possession itself, in which the plaintiffs shall recover the possession as well as damages.

The words of the act are, "and in every such action" (ejectment), "if judgment be rendered for the plaintiff, he shall recover as well his damage as the seisin and possession of the premises." As, therefore, the action for the mesne profits cannot be severed from the action of ejectment, and as, upon every principle of law, tenants in common must join in the action for the mesne profits, it follows, that they must join in the possessory action also.

The principle has also been admitted by the legislature of Vermont, by the act of 29th of October 1806, § 4, which declares, "that tenants in common of any lands, &c., may join in any action which concerns their common interest in such land."

There was no argument on the part of the defendant.

February 23d, 1807. The Court decided, that the action was well brought, and that the will ought to be received in evidence to support the declaration.

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*167] *United States *v.* Zebulon Cantrill.

Indictment.—Repugnancy.

The act of congress of 27th of June 1798, to punish frauds committed on the bank of the United States, is, in itself, repugnant, and will not support an indictment for knowingly uttering as true, a false, forged and counterfeit paper, purporting to be a bank-bill of the United States, signed by the president and cashier.

This case was certified from the Circuit Court of the district of Georgia, the opinions of the judges of that court being opposed upon a motion in arrest of judgment, upon a verdict of guilty on the following indictment, viz:

"The jurors," &c., "upon their oath present, that Zebulon Cantril, late," &c., on the 1st of January 1806, "with force and arms, at the house of one William Gibson, in the town of St. Mary's," &c., "a certain false, forged and counterfeit paper, partly written and partly printed, purporting to be a bank-bill of the United States, for ten dollars, signed by Thomas Willing, president, and G. Simpson, cashier, dated at Philadelphia, the second day of September 1804, payable on demand, to R. Beatty, or bearer, with force and arms, did feloni-