

Syllabus.

sign manifested, nor *indicia* exhibited, nor notice given, which could apprise the community of any change of ownership. The object of the statute is to prevent parties from being misled by apparent ownership of property where real ownership does not exist, but where a secret transfer has been made to another. This object would be defeated if a sale like the present one could be upheld. In the case of *Clafin v. Rosenberg*,* where the vendor had become the clerk of the purchaser, the Supreme Court of Missouri held that the possession which the purchaser was required to take of the property sold, in order to render the sale valid under the statute, must be open, notorious, and unequivocal, such as would inform the public, or those who were accustomed to deal with the party, that the property had changed hands, and that the title had passed from the vendor to the purchaser; observing at the same time that possession of this kind excluded the idea of a joint or concurrent possession with the vendor. The statute being a local one, applying only to sales in Missouri, this court will follow the construction given to it by the highest court of the State.

The assignee of Downing's estate was authorized, by the express terms of the fourteenth section of the Bankrupt Act, to pursue the property thus attempted to be transferred, and, as auxiliary to its recovery, to ask that the sale of the bankrupt be annulled.

DECREE AFFIRMED.

 RODD v. HEARTT.

1. A district judge, sitting as the Circuit Court, may allow an appeal from his own decree.
2. Where the claim on a fund in the Registry of the Admiralty of several mortgages secured in a body by one mortgage, exceeds \$2000, an appeal to this court will lie by the mortgagees in a body, though the claim of no one of them exceed the said sum.
3. Where the Circuit Court "decrees" that a fund in court belongs to cer-

* 42 Missouri, 439.

Statement of the case.

tain persons named, and that their claims be paid, and (the fund not being large enough to pay all the persons in full) orders a distribution by a commissioner, in accordance with the principles laid down by the court, and on a table of distribution being reported by the commissioner, recites that the commissioner had submitted a distribution based upon the decree theretofore made by the court, and then "orders and decrees" that the fund be distributed according to it, the "decree" may be considered as of either date as respects the matter of a supersedeas.

4. As respects the question whether the appeal was in time to operate as a supersedeas, the case is regulated by the act of June 1st, 1872, which allows sixty days, and not by the Judiciary Act of 1789.

ON motion to dismiss an appeal from the Circuit Court for the District of Louisiana; the case being this:

A steamer having been sold under a proceeding *in rem* in the admiralty, left in the registry of the court \$4337.51, claimed on the one hand by Rodd and several other persons, creditors of the owners, who by one mortgage on the vessel had undertaken to secure all these creditors in a body, and on the other hand claimed by Heartt and others, mariners, furnishers of supplies, and material-men. The claim of Rodd under the mortgage was \$4825, and of his co-mortgagees over (in the aggregate) \$8000. The claims of the opposing mariners, furnishers of supplies, and material-men were \$10,151.

The case coming before the District Court that court ordered that the fund in dispute should be paid to Rodd and the others in satisfaction of the mortgage claims. This gave Rodd, who was the largest of the mortgage creditors, \$1498.99 as his *pro rata share*.

From this decree of the District Court the mariners, furnishers of supplies, and material-men appealed; and on the appeal, the Circuit Court, on the 3d of June, 1872, ordered that the decree of the District Court "be avoided and reversed;" and decreed that "the claims of the mariners, furnishers of supplies, and material-men be recognized as superior to those of the mortgage creditors and paid in preference to the latter, and that a new distribution of the proceeds be prepared by the commissioner in accordance with the principles thus laid down."

Argument against the jurisdiction.

A new table of distribution having been prepared accordingly, and reported to the court, the following order was entered on the 6th of June, 1872:

“The commissioner having submitted a distribution based upon the decree heretofore made by the court, it is ordered and decreed that the balance of the proceeds of the steamer, now in the registry of this court, be distributed as follows:”

And then followed the names of the distributees and the *pro rata* sum awarded to each.

This decree being made, Rodd and his co-mortgagees, by one petition filed in the Circuit Court, on the 15th of June, 1872 (but one Sunday having intervened between that day and the preceding 3d of June), prayed an appeal; and on the same day, the *district* judge sitting in the Circuit Court, allowed it.

Mr. R. De Gray, for the motion, asked the dismissal of the appeal on three grounds:

First. That the appeal was from a decree of the Circuit Court, reversing a decree of the District Court, and was allowed by the district judge; who, though the Judiciary Act makes him a member of the Circuit Court, yet provided “that no district judge shall give a vote in any cause of appeal . . . from his own decision.”

Second. Because no one of the claims exceeded \$2000; Rodd’s, which was the largest, being but \$1498.99, and the Judiciary Acts giving an appeal only “where the matter in dispute exceeds \$2000.”

Third. Because the appeal was not in time to operate as a supersedeas; more than ten days, as the learned counsel alleged, having elapsed from the 3d of June, when, as *he* contended, the final decree was entered, till the 15th, when the appeal was allowed, and the Judiciary Act of 1789, making a writ of error (to which by an act of 1803 any appeal conforms) a supersedeas only in cases where it is served within ten days (Sundays excepted) after the decree has passed.

Mr. T. J. Semmes, contra.

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The CHIEF JUSTICE delivered the opinion of the court.*

As to the first of the grounds, on which a dismissal of this appeal is asked, on looking into the acts of Congress relating to the connection of the district judge with the Circuit Court, we are of opinion that, though upon appeals from the District Court the district judge has no vote in the Circuit Court, he has in all other respects the powers of a member of the court, and may consequently allow appeals from its decisions.

Secondly, it is apparent that, though no one of the claims allowed exceeded \$2000, yet the claim of the appellants, which was disallowed, exceeded that sum.

Thirdly, we are of opinion that the decree may be considered as of either the 3d day of June or the 6th day of June, 1872, and that the appeal was in time to operate as a supersedeas under the act of 1789. That act, however, does not prescribe the existing rule. The act of June 1st, 1872,† which must govern the case, allows sixty days for the filing of the bond by which the appeal is made to operate as a supersedeas.

MOTION DENIED.

RAILROAD COMPANY v. LOCKWOOD.

1. A common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law.
2. It is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants.
3. These rules apply both to common carriers of goods and common carriers of passengers, and with especial force to the latter.
4. They apply to the case of a drover travelling on a stock train to look after his cattle, and having a free pass for that purpose.

* This was the last opinion ever delivered by Chief Justice CHASE, and the last also given in the December Term, 1872. It was given on the 1st day of May, 1873. The Chief Justice died on the following 7th.

† 17 Stat. at Large, 198.