as executor of his father's will, but under the legacy. It is immaterial, whether Chapman did or did not know that the slave belonged to the estate of the testator. Five years' possession by Chapman was a good title against all the world.

In England, twenty years' possession is a good bar in ejectment, and it is also a good positive title in itself, upon which an ejectment may be maintained.

*361] *Marshall, Ch. J.—Can an executor distribute the estate, before he has qualified and obtained letters testamentary?

Livingston, J.—In England, an executor, before probate, can do everything but declare.

Washington, J., mentioned the case of *Burnley* v. *Lambert*, 1 Wash. 308, in which it was decided, by the court of appeals of Virginia, that, "after the assent of the executor, the legal property is completely vested in the legatee, and cannot be divested by the creditors."

March 13th, 1809. Marshall, Ch. J., delivered the opinion of the court, to the following effect:—This court is of opinion, that the possession of Chapman was a bar to the seizure of the slave by the marshal, under the execution stated in this case. The only objection of any weight was, that there was no administration upon the estate of Robert Alexander, sen., and consequently, that the possession of Chapman was not an adverse possession. But there was an executor competent to assent, and who did assent, to the legacy, and to the partition between the legatees, and who could not afterwards refuse to execute the will.

Judgment affirmed.

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## Auld *v.* Norwood.

*Fraud.*

If the owner of a slave permit her to remain in the possession of A. for four years, and A., then, without the assent of the owner, delivers her to B., who keeps her four years more, the possession of B. cannot be so connected with the possession of A., as to make it a fraudulent loan, within the act of assembly of Virginia, in regard to B.'s creditors.

Error to the Circuit Court for the district of Columbia, sitting at Alexandria, in an action of detinue, for a female slave named Eliza.

*362] Upon the *trial of the general issue, in the court below, the plaintiff in error, who was defendant in that court, took a bill of exceptions, which stated that evidence was offered of the following facts: The slave, in November 1798, was the property of John Dabney, against whom a *fieri facias* was issued, at the suit of Norwood, the present defendant in error, upon which the slave was seized and sold by the proper officer; that one Charles Turner bought her for the said Norwood, and held her, as Norwood's property, until November 1802, when he delivered her, without authority from Norwood, to one R. B. Jamesson, who held her until September 1806, when he became insolvent, under the insolvent act of the district of Columbia, and delivered her, as part of his property, to Auld, the plaintiff in error, who was appointed trustee under that act. This suit was commenced on the 19th of September 1806. Whereupon, the plaintiff in

error prayed the court to instruct the jury, that if they found the facts to be as stated, the plaintiff below was not entitled to recover. And if the court should not think proper to give that instruction, that they would instruct the jury, that the plaintiff's suffering the slave to remain out of his actual possession, for so long a time, was fraudulent in law as to the defendant. Which instructions the court refused to give, and the defendant Auld excepted. The verdict and judgment being against him, he brought his writ of error.

*Swann*, for the plaintiff in error, contended, that it was to be considered as a loan of the slave to Turner; and that the possession of Jamesson, connected with that of Turner, made a period of more than five years, and by the statute of frauds and perjuries of Virginia (P. P. 16), such possession transferred the property to the person in possession. That statute declares that "where any loan *of goods and chattels shall be pretended to have been made [*363 to any person with whom, or those claiming under him, possession shall have remained by the space of five years, without demand made and pursued by due process of law on the part of the pretended lender," "the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan" "were declared by will, or by deed, in writing proved and recorded as aforesaid."

*C. Lee* and *E. J. Lee*, contrà, contended, that the possession of Jamesson which was adverse to Norwood, could not be connected with Turner's possession, which was under Norwood, so as to make the case a fraudulent loan within the statute.

And of that opinion was THE COURT.

Judgment affirmed.

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## SLACUM *v.* SIMMS and WISE.

### *Disqualification of justice.*

A magistrate who has received a deed of trust from an insolvent debtor, which deed is fraudulent in law as to creditors, is incompetent to sit as a magistrate, in the discharge of the debtor, under the insolvent law of Virginia. And the discharge so obtained is not a disaharge in due course of law.

ERROR to the Circuit Court for the district of Columbia, sitting at Alexandria.

The former judgment of the court below having been reversed in this court, at February term 1806 (3 Cr. 300), and remanded for further proceedings, the following statement of facts, in the nature of a special verdict, was agreed upon by the parties:

That the defendants executed the bond in the declaration mentioned That the defendant Simms, being in custody under the execution mentioned in *the condition of the bond, afterwards obtained his discharge as an [*364 insolvent debtor, by authority of the act of assembly of Virginia, entitled "an act for reducing into one the several acts concerning executions, and for the relief of insolvent debtors." That he was discharged from the prison bounds, by warrant from Amos Alexander and Peter Wise, jr., two of the