

Wilkinson Vs. Leland

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SooperKanoon Citation : sooperkanoon.com/79222

Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 627

Appellant : Wilkinson

Respondent : Leland

Judgement :

Wilkinson v. Leland - 27 U.S. 627 (1829)

U.S. Supreme Court Wilkinson v. Leland, 27 U.S. 2 Pet. 627 627 (1829)

Wilkinson v. Leland

27 U.S. (2 Pet.) 627

ERROR TO THE CIRCUIT

COURT OF RHODE ISLAND

SYLLABUS

J. J. died in New Hampshire seized of real estate in Rhode Island, having devised the same to his daughter, an infant. His executrix proved the will in New Hampshire and obtained a license from a probate court in that state,

to sell the real estate of the testator for the payment of debts. She sold the real estate in Rhode Island for that purpose and conveyed the same by deed, giving a bond to procure a confirmation of the conveyance by the Legislature

of Rhode Island. The proceeds of the sale were appropriated to pay the debts

of the intestate. Held that the act of the Legislature of Rhode Island, which confirmed the title of the purchasers, was valid.

The legislative and judicial authority of New Hampshire were bounded by the territory of that state, and could not be rightfully exercised to pass estates lying in another state. The sale of real estate in Rhode Island by an executrix under a license granted by a court of probate of New Hampshire was void, and a deed executed by her of the estate was, *proprio vigore*, inoperative to pass any title of the testator to any lands described therein.

By the laws of Rhode Island, the probate of a will in the proper probate court is understood to be an indispensable preliminary to establish the right of the devisee, and then his title relates back to the death of the testator.

That government can scarcely be deemed to be free where the rights of property are left solely dependent on the will of the legislative body, without any restraint. The fundamental maxims of a free government seem to require that

the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be justified in assuming that the power to violate or disregard them, a power so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and wellbeing without very strong and direct expressions of such an intention.

It is admitted that the title of an heir by descent in the real estate of his ancestor, and of a devisee of an estate unconditionally devised to him, is upon the death of the party under whom he claims immediately devolved upon him, and he acquires

a vested estate. But this, though true in a general sense, still leaves his title encumbered with all the liens which have been created

by the party in his lifetime, or by law at his decease. It is not an unqualified, though it may be a vested, interest, and it confers no title, except to what remains after every such lien is discharged.

By the laws of Rhode Island as well as of all the New England states, the real estate of intestates stands chargeable with the, payment of their debts upon a deficiency of assets.

A legislative act is to be interpreted according to the intention of the legislature apparent upon its face. Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature.

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This case came before the court upon a bill of exceptions tendered by the plaintiff in error, they having been defendants below on the trial of the cause in the circuit court. In that court, the defendants in error instituted an ejectment for the recovery of a lot of ground called "The Swamp Lot," lying in North Providence in the State of Rhode Island, which lot of ground was, with other lands, devised by Jonathan Jenckes of Winchester in the State of New Hampshire by his last will and testament, dated 17 January, 1787, to his daughter Cynthia Jenckes, subject to a life estate therein of his sister Lydia Pitcher, who was then in possession of the same and so continued until her death on 10 August, 1794.

Jonathan Jenckes was also seized of other lands in North Providence and in Smithfield, Rhode Island, and also of real estate in New Hampshire and in Vermont, most of which were devised to his daughter Cynthia. A small part of his New Hampshire lands was devised for the payment of his debts. Cynthia Jenckes his wife, and Arthur Fenner of Providence, Rhode Island, were appointed the executors of his will. Cynthia Jenckes alone qualified as executrix. The testator

died at Winchester in New Hampshire on 31 January, 1787, a few days after making his will.

No probate of the will of Jonathan Jenckes was made in the State of Rhode Island.

The plaintiffs in the ejectment are the heirs of Cynthia Jenckes, and claim the premises under the devise to her, she having afterwards intermarried with Joel Hastings.

The title of the plaintiff in error was as follows:

Cynthia Jenckes the widow and executrix of Jonathan Jenckes, having been qualified in New Hampshire to act as executrix, on 18 August, 1790, returned to the Probate Court of the County of Cheshire an inventory of the real and personal estate in New Hampshire and Vermont amounting to 1792 12s. 9d. A commission of insolvency was afterwards granted by the probate court, and on 3 January, 1792, the commissioners reported the whole amount of debts due by the estate, of which 6,920 19s. were due to citizens of Rhode Island. In February, 1792, the executrix

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settled her account in the probate court, and a balance of 15 7s. 7d. remained in her hands, "the guardian of the heirs appearing and consenting" to the settlement.

On 22 July, 1790, a license to sell the real estate of Jonathan Jenckes, to pay and discharge the debts of the estate was granted by the Probate Court of Cheshire County, and on 12 November, 1791, Cynthia Jenckes, as executrix of Jonathan Jenckes, sold and conveyed by deed to Moses Brown and Oziel Wilkinson, the reversion of the three-acre Swamp lot, the premises in dispute. The other real estate in Rhode Island was also sold and conveyed by her at the same time.

On the day the sale was made, Cynthia Jenckes executed a bond to the purchasers reciting that by virtue of the license and in pursuance of its directions, a sale had been made of all the estate which belonged to the testator in the Towns of Providence, Smithfield, and North Providence, in the County of Providence and

State of Rhode Island, and that she had received pay for the same,

"and whereas some doubts may arise whether a sale and conveyance so made, by virtue of the license of the judge of probate in the State of New Hampshire, will give a good and sufficient title to lands and tenements lying in the State of Rhode Island and Providence Plantations, now, for the clearing of all doubts respecting the premises, I, the said Cynthia Jenckes, in my said capacity, do covenant, and engage for myself, my heirs, executors and administrators, to and with the said Moses Brown, Oziel Wilkinson, and Thomas Arnold, their heirs, executors, and administrators, that I will procure an act to be passed by the Legislature of the State of Rhode Island ratifying and confirming the title by me granted and conveyed as aforesaid, to them and their heirs and assigns forever, or in failure thereof, that I will repay the purchase money which I have received for the same, with lawful interest and such reasonable costs and damages which they may or shall thereby sustain as shall sufficiently indemnify, and save them free from loss in the premises to all intents and purposes."

At the June sessions of the legislature, Cynthia Jenckes,

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by her attorney regularly constituted, petitioned the Legislature of the State of Rhode Island, representing

"That the personal estate of the said Jonathan Jenckes being insufficient to pay his debts, your petitioner obtained authority from the honorable John Hubbard, Judge of Probate for the County of Cheshire in said State of New Hampshire, where the said Jonathan last lived, to make sale of so much of the real estate of the said Jonathan Jenckes as should be sufficient for the purpose of paying his debts; that your petitioner, in pursuance of said authority, sold and conveyed a part of said deceased's estate situate in this state; that for the said estate your petitioner received a part of the consideration money, and the residue thereof is to be paid when the deed executed by your petitioner shall be ratified by this assembly; your petitioner would further show that the residue of the said purchase

money is absolutely necessary to pay the debts due from said estate and which are now running in interest. She therefore humbly prays your honors will be pleased to ratify and confirm the sale aforesaid, being by a deed made by your petitioner unto Moses Brown and others, on 12 November, A.D. 1791, for the consideration of five hundred and fifty dollars; whereby your petitioner conveyed the right of redemption to a certain mortgaged estate, and also other lands in said deed mentioned, situate in Smithfield and North Providence."

Whereupon the legislature passed the following act:

" *State of Rhode Island, sc.* "

"At June session of the General Assembly, A.D. 1792."

"Whereas, Cynthia Jenckes, late of Winchester in the State of New Hampshire, now of the State of Vermont, executrix of the last will and testament of Jonathan Jenckes, late of Winchester aforesaid, deceased, preferred a petition and represented unto this assembly, that his personal estate being insufficient for the payment of his debts, she obtained authority from the honorable John Hubbard, Esq., the Judge of Probate for the County of Cheshire in the State of New Hampshire aforesaid, where the said Jonathan last lived, to make sale of so much of the real estate of the said Jonathan Jenckes, as should be sufficient to pay his debts; that

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by virtue of said authority, she made sale to Moses Brown and others of part of the said real estate situate within this state; that she hath received part of the consideration money, and the remainder is to be paid when the sale aforesaid shall be ratified by this assembly, and that the residue of said purchase money is necessary for the payment of said debts, and thereupon, the said Cynthia prayed this assembly to ratify and confirm the sale aforesaid, which was made by a deed executed by her on 12 November last past, for the consideration of five hundred and fifty dollars, whereby she conveyed the right of redemption to a certain mortgaged estate, and also other lands in the said deed mentioned, situate in

Smithfield and North Providence."

"On due consideration whereof it is enacted by this general assembly and by the authority thereof that the prayer of the said petitioner be granted and that the said deed be, and the same is hereby ratified and confirmed so far as respects the conveyance of any right or interest in the estate mentioned in said deed, which belonged to the said Jonathan Jenckes at the time of his decease."

A judgment *pro forma*, for the plaintiffs, was entered in the circuit court, and this writ of error was sued out.

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MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the Circuit Court of the district of Rhode Island in a case where the plaintiff in error was defendant in the court below. The original action was an ejectment, in the nature of a real action, according to the local practice, to recover a parcel of land in North Providence in that state. There were several pleas pleaded of the statute of limitations, upon which it is unnecessary to

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say anything, as the questions thereon have been waived at the bar. The cause was tried upon the general issue and, by consent of the parties, a verdict was taken for the plaintiffs and a bill of exceptions allowed upon a *pro forma* opinion given by the court in favor of the plaintiffs to enable the parties to bring the case before this Court for a final determination. The only questions which have been discussed at the bar arise under this bill of exceptions.

The facts are somewhat complicated in their details, but those which are material to the points before us may be summed up in a few words.

The plaintiffs below are the heirs at law of Cynthia Jenckes, to whom her father, Jonathan Jenckes, by his will in 1787, devised the demanded premises in fee,

subject to a life estate then in being, but which expired in 1794. By his will, Jonathan Jenckes appointed his wife Cynthia and one Arthur Fenner, executrix and executor of his will. Fenner never accepted the appointment. At the time of his death, Jonathan Jenckes lived in New Hampshire, and after his death his widow duly proved the will in the proper court of probate in that state, and took upon herself the administration of the estate as executrix. The estate was represented insolvent, and commissioners were appointed in the usual manner to ascertain the amount of the debts. The executrix, in July, 1790, obtained a license from the judge of probate in New Hampshire to sell so much of the real estate of the testator as, together with his personal estate, would be sufficient to pay his debts and incidental charges. The will was never proved or administration taken out in any probate court of Rhode Island. But the executrix, in November, 1791, sold the demanded premises to one Moses Brown and Oziel Wilkinson, under whom the defendant here claims, by a deed, in which she recites her authority to sell as aforesaid and purports to act as executrix in the sale. The purchasers, however, not being satisfied with her authority to make the sale, she entered into a covenant with them on the same day, by which she bound herself to procure an act of the Legislature of Rhode Island ratifying and confirming the title so granted, and on failure thereof

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to repay the purchase money, &c.; She accordingly made an application to the Legislature of Rhode Island for this purpose, stating the facts in her petition, and thereupon an act was passed by the legislature, at June session 1792, granting the prayer of her petition and ratifying the title. The terms of this act we shall have occasion hereafter to consider. In February, 1792, she settled her administration account in the probate court in New Hampshire, and thereupon the balance of 15 7s. 7d. only remained in her hands for distribution.

Such are the material facts, and the questions discussed at the bar ultimately resolve themselves into the consideration of the validity and effect of the act of 1792. If that act was constitutional and its terms, when properly construed, amount to a legal confirmation of the sale and the proceedings thereon, then the plaintiff is

entitled to judgment, and the judgment below was erroneous. If otherwise, then the judgment ought to be affirmed.

It is wholly unnecessary to go into an examination of the regularity of the proceedings of the probate court in New Hampshire, and of the order or license there granted to the executrix to sell the real estate of the testator. That cause could have no legal operation in Rhode Island. The legislative and judicial authority of New Hampshire were bounded by the territory of that state, and could not be rightfully exercised to pass estates lying in another state. The sale, therefore, made by the executrix to Moses Brown and Oziel Wilkinson, in virtue of the said license was utterly void, and the deed given thereupon was, *proprio vigore*, inoperative to pass any title of the testator to any lands described therein. It was a mere nullity.

Upon the death of the testator, his lands in Rhode Island, if not devised, were cast by descent upon his heirs, according to the laws of that state. If devised, they would pass to his devisees according to the legal intendment of the words of the devise. But, by the laws of Rhode Island, the probate of a will in the proper probate court is understood to be an indispensable preliminary to establish the right of the devisee, and then his title relates back to the death of the

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testator. No probate of this will has ever been made in any court of probate in Rhode Island, but that objection is not now insisted on, and if it were and the act of 1792 is to have any operation, it must be considered as dispensing with or superseding that ceremony.

The objections taken by the defendants to this act are, in the first place, that it is void as an act of legislation because it transcends the authority which the Legislature of Rhode Island can rightfully exercise under its present form of government. And in the next place that it is void as an act of confirmation because its terms are not such as to give validity to the sale and deed, so as to pass the title of the testator, even if it were otherwise constitutional.

The first objection deserves grave consideration from its general importance. To all that has been said at the bar upon the danger, inconvenience, and mischiefs of retrospective legislation in general and of acts of the character of the present in particular this Court has listened with attention and felt the full force of the reasoning. It is an exercise of power, which is of so summary a nature, so fraught with inconvenience, so liable to disturb the security of titles and to spring by surprise upon the innocent and unwary to their injury and sometimes to their ruin, that a legislature invested with the power can scarcely be too cautious or too abstemious in the exertion of it.

We must decide this objection, however, not upon principles of public policy, but of power, and precisely as the state court of Rhode Island itself ought to decide it.

Rhode Island is the only state in the Union which has not a written constitution of government containing its fundamental laws and institutions. Until the Revolution in 1776, it was governed by the charter granted by Charles II in the fifteenth year of his reign. That charter has ever since continued in its general provisions to regulate the exercise and distribution of the powers of government. It has never been formally abrogated by the people, and, except so far as it has been modified to meet the exigencies of the Revolution, may be considered as now a fundamental law. By this charter, the power to make laws is granted to the

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general assembly in the most ample manner,

"so as such laws, &c.;, be not contrary and repugnant unto, but as near as may be agreeable to the laws, &c.;, of England, considering the nature and constitution of the place and people there."

What is the true extent of the power thus granted must be open to explanation as well by usage as by construction of the terms in which it is given. In a government professing to regard the great rights of personal liberty and of property, and which is required to legislate in subordination to the general laws of England, it would not lightly be presumed that the great principles of Magna Charta were to be

disregarded, or that the estates of its subjects were liable to be taken away without trial, without notice, and without offense. Even if such authority could be deemed to have been confided by the charter to the General Assembly of Rhode Island as an exercise of transcendental sovereignty before the Revolution, it can scarcely be imagined that that great event could have left the people of that state subjected to its uncontrolled and arbitrary exercise. That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming, that the power to violate and disregard them -- a power so repugnant to the common principles of justice and civil liberty lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and wellbeing without very strong and direct expressions of such an intention. In [Terret v. Taylor](#), 9 Cranch 43, it was held by this Court that a grant or title to lands once made by the legislature to any person or corporation is irrevocable and cannot be reassumed by any subsequent legislative act, and that a different doctrine is utterly inconsistent with the great and fundamental principle of a republican government and with the right of the citizens to the free enjoyment of their property *lawfully*

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acquired. We know of no case in which a legislative act to transfer the property of A. to B. without his consent has ever been held a constitutional exercise of legislative power in any state in the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced. We are not prepared, therefore, to admit that the people of Rhode Island have ever delegated to their legislature the power to divest the vested rights of property, and transfer them without the assent of the parties. The counsel for the plaintiffs have themselves admitted that they cannot contend for any such doctrine.

The question then arises whether the act of 1792 involves any such exercise of power. It is admitted that the title of an heir by descent in the real estate of his ancestor, and of a devisee in an estate unconditionally devised to him, is, upon the death of the party under whom he claimed, immediately devolved upon him and he acquires a vested estate. But this, though true in a general sense, still leaves his title encumbered with all the liens which have been created by the party in his lifetime or by the law at his decease. It is not an unqualified, though it be a vested, interest, and it confers no title except to what remains after every such lien is discharged. In the present case, the devisee under the will of Jonathan Jenckes without doubt took a vested estate in fee in the lands in Rhode Island. But it was an estate, still subject to all the qualifications and liens which the laws of that state annexed to those lands. It is not sufficient to entitle the heirs of the devisee now to recover to establish the fact that the estate so vested has been divested, but that it has been divested in a manner inconsistent with the principles of law.

By the laws of Rhode Island, as indeed by the laws of the other New England states (for the same general system pervades them on this subject), the real estate of testators and intestates stands chargeable with the payment of their debts upon a deficiency of assets of personal estate. The deficiency being once ascertained in the probate court, a license is granted by the proper judicial tribunal, upon the

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petition of the executor or administrator, to sell so much of the real estate as may be necessary to pay the debts and incidental charges. The manner in which the sale is made is prescribed by the general laws. In Massachusetts and Rhode Island, the license to sell is granted, as matter of course, without notice to the heirs or devisees, upon the mere production of proof from the probate court of the deficiency of personal assets. And the purchaser at the sale, upon receiving a deed from the executor or administrator, has a complete title and is in immediately under the deceased, and may enter and recover the possession of the estate notwithstanding any intermediate descents, sales, disseizins, or other transfers of title or seizin. If, therefore, the whole real estate be necessary for the payment of

debts and the whole is sold, the title of the heirs or devisees is, by the general operations of law, divested and superseded, and so, *pro tanto*, in case of a partial sale.

From this summary statement of the laws of Rhode Island it is apparent that the devisee under whom the present plaintiffs claim took the land in controversy subject to the lien for the debts of the testator. Her estate was a defeasible estate, liable to be divested upon a sale by the executrix in the ordinary course of law for the payment of such debts, and all that she could rightfully claim would be the residue of the real estate after such debts were fully satisfied. In point of fact, as it appears from the evidence in the case, more debts were due in Rhode Island than the whole value for which all the estate there was sold, and there is nothing to impeach the fairness of the sale. The probate proceedings further show that the estate was represented to be insolvent, and in fact it approached very near to an actual insolvency. So that upon this posture of the case, if the executrix had proceeded to obtain a license to sell, and had sold the estate according to the general laws of Rhode Island, the devisee and her heirs would have been divested of their whole interest in the estate in a manner entirely complete and unexceptionable. They have been divested of their formal title in another manner, in favor of creditors entitled to the estate, or rather their formal title has been made subservient to the paramount title of the creditors.

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Some suggestions have been thrown out at the bar intimating a doubt whether the statutes of Rhode Island giving to its courts authority to sell lands for payment of debts extended to cases where the deceased was not, at the time of his death, an inhabitant of the state. It is believed that the practical construction of these statutes has been otherwise. But it is unnecessary to consider whether that practical construction be correct or not, inasmuch as the laws of Rhode Island in all cases make the real estate of persons deceased chargeable with their debts, whether inhabitants or not. If the authority to enforce such a charge by a sale be not confided to any subordinate court, it must, if at all, be exercised by the legislature itself. If it be so confided, it still remains to be shown that the legislature is

precluded from a concurrent exercise of power.

What then are the objections to the act of 1792? First, it is said that it divests vested rights of property. But it has been already shown that it divests no such rights except in favor of existing liens of paramount obligation, and that the estate was vested in the devisee expressly subject to such rights. Then again it is said to be an act of judicial authority which the legislature was not competent to exercise at all, or if it could exercise it, it could be only after due notice to all the parties in interest and a hearing and decree. We do not think that the act is to be considered as a judicial act, but as an exercise of legislation. It purports to be a legislative resolution, and not a decree. As to notice, if it were necessary (and it certainly would be wise and convenient to give notice where extraordinary efforts of legislation are resorted to which touch private rights), it might well be presumed, after the lapse of more than thirty years and the acquiescence of the parties for the same period, that such notice was actually given. But by the general laws of Rhode Island upon this subject, no notice is required to be or is in practice given to heirs or devisees in cases of sales of this nature, and it would be strange if the legislature might not do without notice the same act which it would delegate authority to another to do without notice. If the legislature had authorized a future sale by the

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executrix for the payment of debts, it is not easy to perceive any sound objection to it. There is nothing in the nature of the act which requires that it should be performed by a judicial tribunal or that it should be performed by a delegate, instead of the legislature itself. It is remedial in its nature, to give effect to existing rights.

But it is said that this is a retrospective act which gives validity to a void transaction. Admitting that it does so, still it does not follow that it may not be within the scope of the legislative authority in a government like that of Rhode Island if it does not divest the settled rights of property. A sale had already been made by the executrix under a void authority, but in entire good faith (for it is not

attempted to be impeached for fraud), and the proceeds, constituting a fund for the payment of creditors, were ready to be distributed as soon as the sale was made effectual to pass the title. It is but common justice to presume that the legislature was satisfied that the sale was *bona fide* and for the full value of the estate. No creditors have ever attempted to disturb it. The sale then was ratified by the legislature, not to destroy existing rights, but to effectuate them, and in a manner beneficial to the parties. We cannot say that this is an excess of legislative power unless we are prepared to say that in a state not having a written constitution, acts of legislation, having a retrospective operation, are void as to all persons not assenting thereto, even though they may be for beneficial purposes and to enforce existing rights. We think that this cannot be assumed as a general principle by courts of justice. The present case is not so strong in its circumstances as that of [Calder v. Bull](#), 3 Dall. 386, or *Rice v. Parkman*, 16 Mass. 226, in both of which the resolves of the legislature were held to be constitutional.

Hitherto the reasoning of the Court has proceeded upon the ground that the act of 1792 was in its terms sufficient to give complete validity to the sale and deed of the executrix, so as to pass the testator's title. It remains to consider whether such is its predicament in point of law.

For the purpose of giving a construction to the words of the act, we have been referred to the doctrine of confirmation

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at the common law in deeds between private persons. It is said that the act uses the appropriate words of a deed of confirmation, "ratify and confirm," and that a confirmation at the common law will not make valid a void estate or act, but only one which is voidable. It is in our judgment wholly unnecessary to enter upon any examination of this doctrine of the common law, some of which is of great nicety and strictness, because the present is not an act between private persons having interests and rights to be operated upon by the terms of their deed. This is a legislative act, and is to be interpreted according to the intention of the legislature, apparent upon its face. Every technical rule as to the construction or force of

particular terms must yield to the clear expression of the paramount will of the legislature. It cannot be doubted that an act of Parliament may by terms of confirmation make valid a void thing if such is its intent. The cases cited in Plowden 399, in Comyn's Dig. Confirmation, D, and in 1 Roll.Abridg. 583, are directly in point. The only question then is what is the intent of the legislature in the act of 1792? Is it merely to confirm a void act, so as to leave it void, that is to confirm it in its infirmity? or is it to give general validity and efficacy to the thing done? We think there is no reasonable doubt of its real object and intent. It was to confirm the sale made by the executrix, so as to pass the title of her testator to the purchasers. The prayer of the petition, as recited in the act, was that the legislature would "ratify and confirm the sale aforesaid, which was made by a deed executed by the executrix, &c.;" The object was a ratification of the sale, and not a mere ratification of the formal execution of the deed. The language of the act is

"on due consideration whereof it is enacted, &c., that the prayer of the said petitioner be granted and that the deed be and the same is hereby ratified and confirmed so far as respects the conveyance of any right or interest in the estate mentioned in said deed, which belonged to the said Jonathan Jenckes at the time of his decease."

It purports, therefore, to grant the prayer, which asks a confirmation of the sale, and confirms the deed, as a conveyance of the right and interest of

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the testator. It is not an act of confirmation by the owner of the estate, but an act of confirmation of the sale and conveyance by the legislature in its sovereign capacity.

We are therefore all of opinion that the judgment of the circuit court ought to be reversed and that the cause be remanded with directions to the court to award a venire facias de novo.

