ADAMS v. WOODS.

The case in *Cunningham* is reported in 1 *Salk.* and 5 *Mod.* and seems to be founded on the peculiar phraseology of the statute of the 21 of *James* 1. directing informations to be filed in the county in which the offences were committed. That statute was expounded to extend only to offences, which at the time of its passage were punishable by law. But the words of the act of congress plainly apply to all fines and forfeitures under any penal act, whenever that act might pass. They are the stronger because not many penal acts were at that time in the code.

In expounding this law, it deserves some consideration, that if it does not limit actions of debt for penalties, those actions might, in many cases, be brought at any distance of time. This would be utterly repugnant to the genius of our laws. In a country where not even treason can be prosecuted after a lapse of three years, it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture.

The court is of opinion that it be certified to the circuit court for the district of Massachusetts, that the issue in law joined in this case, ought to be decided in favour of the defendant.

WINCHESTER v. HACKLEY.

WINCHESTER *v.* HACKLEY.*

A creditor upon open account who has assigned his claim to a third person, with the assent of the debtor, is still competent to maintain an action at law in his own name against the debtor, for the use of the assignee; but

ERROR to the circuit court for the district of Virginia.

The declaration was for money paid and advanced by the defendant in error for the use of the plaintiff in error.

Upon trial of the issue of *non assumpsit* two bills of exception were taken by the original defendant. The verdict was, for plaintiff 4155 dollars damages.

The first bill of exception stated, that the plaintiff below offered in evidence sundry *bills of exchange* drawn

*Present, *Marshall, Ch. J. Cushing, Patterson,* and *Washington, Justices.*

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the debtor is allowed to off-set his claims against the assignee. The defendant cannot off-set a claim for bad debts made by the misconduct of the plaintiff in selling the defendant's goods as factor—the plaintiff not having guaranteed those debts. But such misconduct is properly to be inquired into, in a suit for that purpose.

by the defendant upon the plaintiff, to an amount equal to the balance demanded by the plaintiff of the defendant.—And also *several accounts current* between the defendant, and the mercantile firm of Richard S. Hackley, and Co. of the city of New-York; of which the plaintiff and Seth B. Wigginton were *two*; that the said bills of exchange were debited to the defendant in the said accounts, as being due from him to the said Richard S. Hackley, and Co. an that the said accounts contained various other articles of debit and credit to a considerable amount, commenced on the . day of and continued till the day of when the firm of *Richard S. Hackley* was changed into that of *Richard S. Hackley and Co.* and concluded on the . day of

That in these accounts, the balance stated to be due from the defendant, to the said *Richard S. Hackley*, on the day of is transferred, with the consent of the said *Richard S. Hackley*, to the said *Richard S. Hackley and Co.* and that the account in which the said balance is so transferred to the said *Richard S. Hackley, and Co.* and the formation of that firm, were communicated by the said *Richard S. Hackley* himself to the defendant, before the institution of this suit; and that the defendant thereafter, made to the said *Richard S. Hackley, and Co.* several remittances in money and commodities, towards the discharge of the said balance, and addressed to them several letters concerning the same, which remittances and letters came to the hands of the said *Richard S. Hackley, and Co.* Whereupon the defendant moved the court to instruct the jury, that if the balance aforesaid, was transferred as aforesaid to *Richard S. Hackley and Co.* it was not a subsisting debt from the defendant to the plaintiff alone, at the commencement of this suit. But the court (consisting of *Marshall, Ch. J.* and *Griffin*, district judge) overruled the motion, being of opinion that, though the debt was in equity transferred to *Richard S. Hackley, and Co.* yet the suit was maintainable for their benefit in the name of *Richard S. Hackley*. At the same time the defendant was permitted to give in evidence, any discounts which he might claim against *Richard S. Hackley, and Co.*

The second bill of exceptions stated, that the plaintiff to support his action, gave in evidence sundry accounts

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current between himself, and the defendant in which the *plaintiff had credited the defendant*, as being in the plaintiff's hands for collection, for the proceeds of a certain quantity of flour, which he had sold for the defendant, but had afterwards charged to the defendant several sums on account of the alleged insolvency of some of the purchasers of the said flour. It also appeared, that in the account current, and accounts of sales, the proceeds of sale of the said flour were stated to be outstanding, subject to collection, and the plaintiff did not undertake to guarantee the debts. Whereupon the defendant, in order to repel that evidence, offered to prove that the sums so charged to the defendant *were lost by the mismanagement and misconduct of the plaintiff*, in having made the sales to persons known by him to be unworthy of credit; but the court refused to permit such proof to be made to the jury in this action, being of opinion that such misconduct was properly to be inquired into in a suit for that purpose.

This case being submitted without argument, *the judgment was affirmed, with costs.*

REILY, APPELLANT *v.* LAMAR, BEALL, AND SMITH, APPELLEES.

REILY v. LAMAR & OTHRES.

The inhabitants of the district of Columbia, by its separation from the states of Virginia and Maryland, ceased to be citizens of those states respectively. By the insolvent law of Maryland, of the 3d of January, 1800, the chancellor of Maryland could not discharge a citizen of

THIS was an appeal by *Reily* from a decree of the circuit court of the district of Columbia, which dismissed his bill in equity with costs.

The defendant, *Beall*, some time in the year 1789 or 1790 had brought suit in the name of *Lamar*, for the use of *Beall*, by *Robert Smith*, his attorney at law, against *Reily*, the appellant, upon a note for 400 dollars, and recovered judgment in the general court of Maryland.

The bill stated that during the pendency of that suit, the complainant *Reily*, supposing that *Smith* was fully authorised to receive payment of the debt in any manner he should think proper, sold him a tract of 4600 acres of land in the state of Georgia, for the sum of 1533 dollars, for the express purpose of discharging that debt and some others which *Reily* owed in Baltimore. That in settling with *Smith* for the purchase money of the land, the amount