"When the location was made and the sections granted ascertained, the title of the plaintiff took effect by relation as of the date of the act, except as to the reservations mentioned, the act having the same operation upon the sections as if they had been specifically described in it.

"It is true that the act of 1864 enlarged the grant of 1862, but this was done, not by words of a new and an additional grant, but by a change in the words of the original act, substituting for those there used words of larger import. This mode was evidently adopted that the grant might be treated as if thus made originally; and therefore, as against the United States, the title of the plaintiff to the enlarged quantity, with the exceptions stated, must be considered as taking effect equally with the title of the less quantity as of the date of the first act."

I do not understand the supreme court to hold that the amendatory grant of 1864 passed to the grantee the title to land which congress had in the mean time granted to another, or which had in the mean time been by competent authority otherwise disposed of. It is certainly clear that during the time intervening between July 1, 1862, when the original grant was made, and July 2, 1864, when it was amended and enlarged, the United States was at liberty to dispose of any public lands outside of the limits of the original grant, and the lands in controversy were during that period public lands outside of said grant. They were, I presume, up to the time of their withdrawal under the grant to the state, lands in the market subject to pre-emption or homestead entry. If any of them had been, prior to the passage of the act of 1864, disposed of under the pre-emption or homestead laws, or patented to private parties under any law of the United States, it would, I apprehend, hardly be claimed that lands thus disposed of would have passed to the complainant. And yet this would be the logical consequence of holding that the two acts are to be construed as one act *for all purposes*.

The supreme court was careful to avoid this construction.

It is said that "when the location was made and the *sections granted ascertained*, the title of the plaintiff took effect by relation as of the date of the act, *except as to the reservations mentioned*." There is in this language a distinct recognition of the fact that the reservations mentioned did not pass, and that an inquiry was necessary to ascertain what sections did and what did not pass. But to make the meaning still more definite and certain the supreme court add, "and therefore, *as against the United States*, the title of the plaintiff to the enlarged quantity, *with the exceptions stated*, must be considered as taking effect equally with the title to the less quantity, as of the date

of the first act." This language not only does not authorize, but it forbids the inference that as against an intervening grantee of some of the lands included within the limits of the larger grant, the title would pass under the two grants as of the date of the former.

It is only as against the United States that this construction prevails. As against other grantees claiming adversely to the United States as well as to complainant, the later act must be considered as a subsequent grant and as taking effect only from its date.

Decree for respondent.

In re DIXON, Bankrupt.

(*Circuit Court, W. D. Missouri, E. D.* January, 1881.)

NOVATION—SUFFICIENT CONSIDERATION.

An agreement on the part of a debtor to make five new notes, in accordance with the request of the creditor, for the purpose of enabling the creditor to bring suits on the new notes in the justice's court, which he could not do on the original claim, is an agreement upon sufficient consideration. Such an agreement cancels the original contract, and substitutes for it five new contracts.

Petition for Review in Bankruptcy.

Belch & Silver, for petitioner.

J. R. Edwards, for bankrupt.

MCCRARY, C. J. Upon petition of the bankrupt the district court ordered that certain land be set apart to him as a homestead, and as such, exempt. This order was made against the objection of the First National Bank of Jefferson City, one of the creditors of the bankrupt estate. The bank files its petition under section 4986, Rev. St., praying a review and reversal of said order of the district court. The ground upon which the decision of the court below is attacked is that the debt held by the bank against the bankrupt was contracted prior to the acquisition by the bankrupt of the premises now claimed by him as exempt under the homestead law of Missouri. 1 Rev. St. Mo. p. 452, § 2695.

The proof shows that at the time the original indebtedness was contracted the land in question was held in common by the bankrupt and his father, Levi Dixon. The original debt was contracted January 23, 1874. It does not appear from the evidence whether the original debt was evidenced by more than one note or not; but it