Greenh. Pub. Pol. 36. In such a case there is the possibility that the person owing the illegal debt may not rely on the illegality as a defense, and, considering it a matter of honor, may pay it. This possibility makes the assignment of the claim a valuable consideration. More than this, under the act of 1882 (79 Ohio Laws, p. 118), and section 4270 of the Revised Statutes of Ohio, as construed by the supreme court of Ohio in Lester v. Buel, 49 Ohio St. 240, 30 N. E. 821, Norton would have the right to recover back the $4,000 from the brokers with whom the gambling was done; and we see no reason why an assignment by Norton of his claim against the brokers would not carry this right with it. The right to recover $4,000 from the brokers would certainly constitute a good and valuable consideration to support Morris' note. On the hypothesis that the jury may find from the evidence that the note was given by Morris for the consideration that he felt in honor bound to reimburse the loss Norton had made through trust in brokers recommended by him, and that there was no stipulation as to the transfer of the claim from Norton to Morris, a different result follows. The note could not be enforced, because Morris' sense of honor was not a valuable consideration. Eastwood v. Kenyon, 11 Adol. & E. 438, 446; Mills v. Wyman, 3 Pick. 207; Dodge v. Adams, 19 Pick. 429; Wiggins v. Keizer, 6 Ind. 252; Hendricks v. Robinson, 56 Miss. 694; Dearborn v. Bowman, 3 Metc. (Mass.) 155; Updike v. Titus, 13 N. J. Eq. 151; Cook v. Bradley, 7 Conn. 57; Wald, Pol. Cont. (2d Ed.) 169. More than this, the note would be void for illegality, because it would merely be evidence of Morris' assumption of the brokers' obligation to pay a gambling debt, without any new consideration. It would be the same debt, with only a change of debtors, and would be subject to the same defense of illegality by the new debtor as by the old. Coulter v. Robertson, 14 Smedes & M. 18; Edwards v. Skirving, 1 Brev. 548; Blasdel v. Fowle, 120 Mass. 447.

The result of our consideration of this case is that upon the testimony admitted, and which should have been admitted, there was evidence enough to sustain a special verdict by the jury, upon which judgment would have to be entered in favor of Morris on the question of the legality and binding effect of the two notes in suit, which were only renewals of the original note. The action of the court below in excluding evidence, and in directing a verdict for Norton's administratrix, was therefore erroneous. The judgment of the circuit court is reversed, at the costs of defendant in error, with directions to order a new trial.

McLEOD et al. v. UNITED STATES.

(Circuit Court, S. D. New York. May 26, 1896.)

No. 2,273.

1. CUSTOMS DUTIES—CLASSIFICATION—MANUFACTURES OF FLAX.

Manufactures of jute, having the single warp and single weft characteristic of burlaps, and which are known as black burlaps, black paddings,

Hessians, parcelines, etc., are dutiable, under paragraph 277 of the act of 1894, as manufactures of flax not otherwise provided for, and are not free as "burlaps," under paragraph 424½.

2. SAME—STAGES OF MANUFACTURE.

Where an article has been so advanced by separate processes as to be adapted for a special purpose different from the original purpose, and to be sold to a different class of persons, and to be known under special commercial designations, it is no longer included under the original commercial designation.

This was a petition by D. W. McLeod & Co. for a review of the decision of the board of general appraisers in respect to the classification for duty of certain merchandise imported by them.

Stephen G. Clarke, for importers.
Henry D. Sedgwick, Jr., Asst. U. S. Atty.

TOWNSEND, District Judge. The articles in question are manufactures of jute, with the single warp and single weft characteristic of burlaps. They have, however, been subjected, since becoming burlaps, to special processes of calendering, sizing, and dyeing black. The board of general appraisers found that they were manufactures of flax not otherwise provided for, and assessed them for duty under paragraph 277 of the act of 1894. The importers claim that they are free under paragraph 424½ of the free list in said act. The term "burlap" is a commercial term. Lamb v. Robertson, 38 Fed. 716. The chief question in this case is whether the importer has shown that these goods are commercially known as burlaps. From the mass of testimony taken in the circuit court it appears that these articles are variously known as black burlaps, black paddings, Hessians, parcelines, pelissiers, stiffene, canvas, buckram, etc. The contention of the importer is that all of the goods are included under the class burlaps, and that these names are mere subordinate terms. I think, however, that the importer has failed to prove this contention. It appears that these different names are not applied to different classes of goods, but by different trades to the same black burlaps; that they were recognized in former acts as paddings, or canvas, distinct from burlaps, and they are still generally known as paddings or canvas. It is unnecessary to discuss the various prior decisions of the board of general appraisers and of the circuit court. It appears that on a former hearing the board found that these black paddings were not burlaps, and that the importers acquiesced therein. I think the importer has failed to sustain the burden of showing a uniform commercial usage which would include these goods under the commercial designation of "burlaps." They would seem to fall within the rule that, where an article has been so advanced by separate processes as to be adapted to be used for a special purpose different from the original purpose, and to be sold to a different class of persons, and to be known under special commercial designations, it is no longer included under the original commercial designation. The decision of the board of general appraisers is affirmed.

SOUTHERN BANK & TRUST CO. et al. v. FOLSOM et al.

(Circuit Court of Appeals, Sixth Circuit. July 8, 1896.)

No. 391.

1. CONFLICTING JURISDICTIONS—FEDERAL AND STATE COURTS.
The levy of an attachment issuing from the Tennessee chancery court, and the return of the writ to the court, place the attached land within the control of the state court. The action of the circuit court of the United States in appointing a receiver thereafter for the land thus attached was an excessive act of authority, and unwarranted under the well-established practice and usage of federal courts under such circumstances.

2. SAME—INJUNCTION BY FEDERAL COURTS.
The application of Rev. St. § 720, prohibiting a federal court from enjoining the proceedings of a state court, is not affected by the fact that the land, a sale of which is sought to be restrained, is the property of the person asking the injunction.

3. JUDGMENT—CONCLUSIVENESS.
A mortgagee is not concluded, so far as the priority of his mortgage is concerned, by a judgment rendered in a suit begun after the date of his mortgage, to which he is not a party.

4. CONFLICTING JURISDICTIONS—BOND SUBSTITUTED FOR PROPERTY.
Where, in a foreclosure suit in a federal court, a bond is given to protect the interests of one claiming a part of the property by reason of an attachment suit in a state court, the bond, in effect, takes the place of the property, and the jurisdiction of the federal court is not defeated by the fact that the state court first obtained possession.

5. UNREGISTERED INSTRUMENT—CREDITOR WITH NOTICE.
Under Mill. & V. Code Tenn. § 2890, providing that instruments not registered shall be void "as to existing or subsequent creditors or bona fide purchasers from the makers without notice," a creditor of the grantor is not affected by an unregistered instrument, though he had notice of its existence.

6. SAME—LEVY OF ATTACHMENT.
A creditor without a judgment, who obtains an attachment and levies it upon the land of his debtor, claimed by another under an unregistered deed, secures thereby a lien, which he may ripen into a title by subsequent decree, or sale under an execution.

Appeal from the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

Bill by the Southern Bank & Trust Company against the East Tennessee Mining & Improvement Company. Complainant filed an intervening petition, to which H. M. Folsom, surviving partner of Folsom & St. John, was made defendant. From a decree in favor of Folsom the complainant and the obligors in a certain indemnity bond appeal.

The case is substantially this: Folsom & St. John, a firm of lawyers, claiming to be creditors of the Magnatite Iron Company, filed an attachment bill in the chancery court of Carter county, Tenn., against that company, and caused an attachment to be levied upon a tract of land in Carter county, as the property of that company, though claimed by the East Tennessee Mining & Improvement Company under some purported conveyance. Both corporations were made defendants,—the former by publication and original attachment, the latter by service of process. The Magnatite Company did not appear, and decree pro confesso was taken against it. The latter appeared, answered, and defended upon the ground that the property attached had been theretofore conveyed to it. Such proceedings were had in the state court as resulted in a decree against the Magnatite Company for the amount of the claim of Folsom & St. John, and directing