

EXECUTOR AND ADMINISTRATOR—Continued.

10. Before the act of 1843, ch. 304, executors, &c. might dispose absolutely of the *whole* personal estate, and neither creditors, nor legatees could pursue the property in the hands of the purchaser, except where collusion was proved between the purchaser and executor, &c. *Ib.*

See LEGATEE, &c., 4, 5. PURCHASERS, 2.

PRACTICE IN CHANCERY, 14.

FIERI FACIAS.

See SHERIFF'S RETURN TO WRIT OF, 1.

PRACTICE IN CHANCERY, 32.

FISHERY AND NAVIGATION, RIGHTS OF.

1. Since the decision of the Court of Appeals, in this state, in the case of *Broune vs. Kennedy*, 5 H. & J., 195, it is impossible to deny but that it is competent to the state to grant land covered by navigable waters, subject to the right of the public to fish in and navigate them: but it does not follow that she is bound to do so, or will do so, in every case in which application is made to her. *Chapman vs. Hoskins*, 485.
2. If the patentee of lands covered by navigable water, should by any act obstruct the navigation, or interfere with the right of fishery, he will be held responsible for such act in the appropriate tribunal, and his patent will afford him no protection. *Ib.*
3. The state can neither impair nor destroy the public right of fishing and navigation. *Ib.*

FORFEITURES AND PENALTIES.

1. The consideration of the mortgage which the complainants sought to enforce, was a forfeit, which the mortgagor agreed to pay them in the event of his failing or neglecting to appoint the complainants his agents, as provided in a certain agreement. HELD—
That this mortgage could not be enforced by this court, the rule being a universal one, that Courts of Equity will not lend their aid to enforce a penalty, or forfeiture, but will leave the parties to their remedy at law. *McKim vs. The White Hall Co.*, 510.
2. It may be laid down as a fundamental doctrine, that equity does not assist the recovery of a penalty or forfeiture, or any thing in the nature of a forfeiture. *Ib.*

FRAUD.

That fraud may be inferred from facts and circumstances, from the character of the contract, or from the condition and circumstances of the parties, is well established. *Thompson vs. Banks*, 430.

See PURCHASERS, 1. INJUNCTION, 3. LIMITATIONS, 10, 11, 12. VACATING DEEDS, 1, 2. PRACTICE IN CHANCERY, 35.

FRAUDULENT CONVEYANCES.

1. The trustee of an insolvent debtor is a necessary party to a bill filed by creditors to vacate a fraudulent conveyance made by the insolvent before his application. *Swan vs. Dent & Richards*, 111.
2. Prior to the act of 1835, ch. 380, the general rule was, that a creditor, before he could pursue property fraudulently conveyed, must have first obtained a judgment with respect to realty, and a judgment and