

JURISDICTION—*Continued.*

lief, by decreeing a sale, and, *a fortiori*, will they do so, when the only remedy of the creditor is to be found in the power of the court in decreeing a sale. *Ib.*

See ELECTION, I. TENANTS IN POSSESSION, 1.

LACHES.

1. S. and G., were, in July, 1836, by agreement of parties, and with the consent of the Chancellor, constituted trustees to receive and invest, *pendente lite*, a certain sum of money detained in court, by appeal. The money was paid to them jointly, and they gave a receipt therefor, and loaned \$5,000, part thereof, to T., who secured the same by a mortgage of certain real estate, to S. and G., jointly. The mortgagor paid interest from time to time to S., one of the trustees, and in 1841, his executors, he having previously died, paid the entire principal to S., and the mortgage was released by S. alone. The payments to S. were without the knowledge, privity or consent of G., who was also ignorant of the release. The appeal was decided in 1838, but no application was made for a distribution of the fund, by those entitled to it by the decision on the appeal, until 1843, when a petition was filed, requiring the trustees to account, and seeking to make G. responsible for the amount received by S., and which he had misapplied. The Court of Appeals, in 1845, decided, that G. was not responsible, for the reason, among others, of the delay of the petitioners in asserting their claim, and it was not until 1848, *ten* years after the decision on the appeal, and after the insolvency and death of S., that this bill was filed by the original petitioners, or the parties representing them against the defendants, the executors of T., and their alienees, seeking a sale of the mortgaged property, for the payment of the mortgage debt, upon the ground that no part of the same had been paid, according to the terms of the mortgage, it was HELD—

That if G. might rely upon the laches of the petitioners, to protect himself from their claim, to make him answerable for the default of S., his co-trustee, these defendants may claim exemption from loss, upon the same ground, with equal, if not more reason, when an attempt is made to compel them to pay a debt a second time, which they have once honestly paid. *Latrobe vs. Tiernan*, 474.

See REHEARING, 5, 6. LAPSE OF TIME.

LAND OFFICE.

1. Since the decision of the Court of Appeals, in the case of *Browne vs. Kennedy*, 5 H. & J., 195, it is impossible to deny 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. Where a party, and those under whom he claims, have held for nearly a century uninterrupted, and unmixed possession of lands; the title founded on this possession is impregnable against any title which the state can grant, as is conclusively shown by the acts of 1818, ch. 90, and 1849, ch. 424. *Ib.*