late those laws. This final consequence can be justified only upon the presumption that he has, or may have, knowledge of the property and effects of the persons intended to be protected, which could not be, if they were non-residents. For these, and other considerations, we are satisfied that these poor laws apply only to the poor of our own State.

2d. As to the declaration, we think no substantial objection can be taken to it. It is true that the second count contains certain special averments, as that plaintiff is the head of a family, etc., but as a special count it is bad for want of other averments, which are omitted. It may, however, be considered, as a good count in trover, the special averments being rejected as surplusage.

Trover, in common form, will lie for a wrong done against the provisions of the poor laws in question. In form, the action is a fiction; in substance, it is a remedy to recover the value of personal chattels wrongfully converted by another to his own use. If the plaintiff have a right of property, and a right of possession at the time of the conversion, trover will lie, and that is all he need allege. The whole case lies [47] in the proof, and upon that he may recover, without special allegation of the numerous facts that must appear, to entitle him to the benefits of these laws.

It may also be observed that special averments are inapplicable to this form of action, and to hold that they are necessary would be to hold that trover will not lie in such case. But the facts which constitute the right, make this remedy peculiarly convenient and proper.

This question of pleading, is raised on the authority of the case of Pollard *v.* Thomason, 5 Humph. 56, reported as an action of trover for selling the plaintiff's horse contrary to the provisions of the act of 1833, ch. 80, sec. 5, and the declaration was held to be defective, because it did not allege that plaintiff was the head of a family.

But upon reference to the record in that case, it is found, that the action was not trover, but trespass.

The judgment will be reversed and the cause remanded for a new trial.

STATE *v.* HAMILTON AND OTHERS.

Knoxville, September, 1850.

STATE BOUND BY THE ACTS OF ITS OFFICERS. The act of a general agent, if within the scope of his general authority, will bind his principal, and this rule is equally applicable to public agents, or the various public functionaries which the government may employ to transact its ordinary business and operations, as to private agents employed by individuals. [Acc. State *v.* Crutcher, 2 Swan, 515, citing this case. See, also, State *v.* Jefferson Turnpike Co., 3 Humph. 305.]

CASE IN JUDGMENT. Although a clerk of court, who fails to pay over, as the time required by law, the amount of State revenue collected by him, is liable to judgment for the amount with the damages given by statute, yet if the treasurer of the State, through the cashier of a bank which is his authorized agent to collect, receive the original amount, the receipt will be a bar to a recovery of interest and damages.

This motion was instituted in the county court of Jefferson, against Hamilton and his securities. The presiding judge, R. M. Anderson, on hearing the evidence dismissed the motion, and the Attorney-General on behalf of the State, appealed.

[48] *Attorney-General*, for the State; *J. Peck*, for defendant.

McKINNEY, J., delivered the opinion of the court.

This was a motion for judgment in the circuit court of Jefferson, for the amount of State revenue collected by the defendant, Hamilton, as clerk of the county court of said county, from the first of September, 1843, to the first of April, 1844. The motion was made at the December term, 1847, of said court, and the amount claimed to be in arrear, as stated in the motion, is $414.60; the comptroller's statement is not set out in the record.

The defendant, Hamilton, produced and offered in evidence the treasurer's receipt, of which the following is a copy.

"BRANCH BANK OF TENNESSEE,

"ATHENS, 20*th March*, 1846.

"$403.76. Received of Joseph Hamilton, clerk of Jefferson county court, four hundred and three dollars, seventy-six cents, audited to him by No. 2388, and due on account of revenue collected by him from 1st September, 1843, to 1st April, 1844.

"ROBERT B. TURNER, Treasurer of Tennessee,

"By V. M. CAMPBELL, Cashier."

Defendant proved, that early in January, 1846, he caused to be ndered to said Branch Bank, the above sum of money, together with the warrant of the comptroller; but the bank refused to receive the money, because of an error in the warrant; in this, that it directed the payment of the money to be made to, instead of, by said Hamilton. The erroneous warrant was thereupon forwarded to the comptroller, who returned a proper warrant; on the receipt of which, the money was again tendered to, and accepted by said bank, and the [49] foregoing receipt executed for the same by the cashier of said bank.

Upon this state of the facts, the attorney-general claimed to recover interest on the entire amount in arrear, from the period when, by law, it should have been paid, to the first of January, 1846, when it was first tendered on the defective warrant, at the rate of six per cent, and likewise damages on said amount at the rate of twelve and-a-half per cent.

The circuit judge dismissed the motion, and refused to render judgment against the defendants for any amount whatever, and the attorney-general appealed in error to this court.

Did the court err in refusing to render judgment? We think not.

The act of 1835, ch. 55, sec. 5, requires, that the clerks of the several courts in this State, shall pay to the treasurer of the State, or to such other person as said treasurer may direct, all such sums of money as they, or either of them, may have collected. The treasurer is the duly constituted agent of the government; the payment to the bank in the present case was pursuant to law, and is to be regarded as a payment to the treasurer. And we are aware of no principle upon which this case can be exempted from the general rule, pervading every system of jurisprudence, that the act of a general agent, or one put in the place of another to transact all his business of a particular kind, if within the general scope of his authority, will bind his principal. This rule, in a case like the present, we think equally applicable to public agents, or the various public functionaries which the government may employ to transact its ordinary business and operations, as to private agents employed by individuals.

The defendant, Hamilton, being in default, was unquestionably liable to be proceeded against for a misdemeanor in office, and likewise to judgment by motion against him and his [50] securities, for the amount accounted for, with damages of twelve and-a-half per cent thereon. The treasurer might, thereupon, have declined receiving the money when tendered, and the defendant, Hamilton, and his sureties have been proceeded against under the statute. But this was not done. On the contrary, the money was received voluntarily — an acquittance in full discharge of the liability given therefor — and this, we think, was a waiver of the penalty of twelve and-a-half per cent damages. And such waiver being voluntary, and without any imputation or fraud, we hold that the government is bound thereby, and, consequently, precluded from maintaining this motion.

Judgment affirmed.

BUSON *v.* DOUGHERTY.

Knoxville, September, 1850.

CONDITIONAL SALE IN WRITING — REGISTRATION — PAROL PROOF. A contract in writing by which one party sells to the other a personal chattel, retaining the title until the consideration is paid, is a conditional sale, not a mortgage, and need not be registered; and parol evidence is inadmissible at law to show that the instrument was intended to be a mortgage. [Citing on the point of a conditional sale, Houston *v.* Dyche, Meigs, 76, and, on the point of registration, Johnson *v.* Jamison, 2 Humph. 298.]

Trover in the circuit court of Hamilton county, by Dougherty against Buson, for the seizure and sale of a wagon, by execution against Wilhite. There was a verdict on the plea of not guilty (Alexander, J., presiding,) against Buson for the value of the wagon, and judgment thereupon.

The defendant appealed.

Minnis, for the plaintiff in error. He cited 5 Humph. 612; 4 Kent, 139, 140; 2 Humph. 298; 1 Humph. 452.

[51] *Gaut*, for defendant in error. He cited Meigs, 281, 76; 2 Kent. 497; 2 Greenl., sec. 640; 7 Yerg. 497; Chitty on Con. 392.

TOTTEN, J., delivered the opinion of the court.

The action is trover — the verdict and judgment for the plaintiff — and the defendant's motion for a new trial having been overruled, he has appealed in error to this court.

The error assigned, is the charge of the court upon the following state of facts:

One William Wilhite, was indebted to the plaintiff in the sum of $90, in payment whereof, he sold and delivered to plaintiff a wagon, the property in question. Plaintiff and Wilhite afterwards made a contract in writing, by which the former sold to the latter, the wagon at $90, payable in hauling, at a given rate, and within a given time. The vendor delivering possession expressly retained the right to the wagon, until the vendee should have fully complied with his part of the contract, and the right to resume possession, in case the vendee should fail to comply.

The vendee having failed to comply, according to his agreement, sent a message to plaintiff by his agent, to take the wagon if he wanted it; after this, the defendant, a sheriff, levied on it, in virtue of an attachment, and took it into possession; the plaintiff made demand of it, and being refused, instituted this suit.

There was parol proof tending to show, that the written contract before recited was in effect a mortgage on the wagon, to secure the plaintiff's debt of $90. But the court instructed the jury that it was a conditional sale, and that there was no law requiring it to be registered.

In the first place, what is the legal character of the paper as it appears on its face? It is not a mortgage, because, in the case of a mortgage, the legal title passes to the vendee, for the security of a debt.

But here, the title is retained by [52] the vendor, and the vendee has only the possession and use. It is true, that the title is retained for the security of the debt, but, on its payment, the title to the property would revert to the vendor, if it were a mortgage; but here, on payment of the debt, the vendee's title to the property becomes absolute. See Gambling *v.* Read, Meigs, 234. Nor could its character in this respect be changed by parol evidence in a court of law. It would not be competent, in that forum, to prove a parol defeasance, and make the present sale, or an absolute sale in writing, appear a mortgage; such a practice would violate a well settled principle, that parol evidence is inadmissible