Blackwell *v.* Patten and others.

Writ of error.—Teste.

A writ of error, issued in September, may bear *teste* of the February term preceding, and may be returnable to the next February term, notwithstanding the intervention of the August term between the *teste* and return of the writ.

March 13th, 1812. *Jones*, for the defendants in error, moved this Court to dismiss the writ of error, because it bore *teste* of February term 1810, was issued in September 1810, and was returnable to February term 1811, whereas, it ought to have been tested of August term 1810. The plaintiff in error, aware of this objection, has sued out another writ of error, which stands on a subsequent part of the docket.

*278] * *Campbell*, on the same side.—August term is as much a term for *teste* and return of writs, as February term. Suppose, the writ bore *teste* ten years ago: it might as well be made returnable to February term 1811, as this writ which bore *teste* of February term 1810. If tested of February term 1810, it ought to have been returnable to August term 1810, and not to February term 1811. The appearance of the defendants in error only cures the want of a citation, not a fault in the writ of error itself.

March 14th, 1812. All the judges being present, The Court refused to quash or dismiss the writ of error, on account of the irregularity of its *teste*.

Wallen *v.* Williams. (*a*)

Supersedeas.

The court will not quash an execution, issued by the court below, to enforce its decree, pending the writ of error, if the writ of error be not a *supersedeas* to the decree.

Error to the Circuit Court of the district of Tennessee, to reverse a decree in chancery. The court below had issued a writ of *habere facias possessionem* to enforce its decree. The writ of error was too late to be a *supersedeas* to the decree.

Jones, for the plaintiff in error, now moved to quash the writ of *habere facias* as irregular, and contended, that the court below, sitting as a court of chancery, under the laws of Tennessee, could only enforce by execution decrees for the payment of money; and cited Tennessee Laws (Ed. 1807), p. 158, § 2.

P. B. Key, contrà.—This court has no jurisdiction to quash an execution issued from the court below, and executed. But if this court had the power to do it, it would not, in its discretion, quash a process which has merely carried into effect the decree of the court below. If the decree be reversed
*279] upon the merits, the execution *will be of no avail; but the court will not anticipate the merits, upon such a motion.

Marshall, Ch. J.—The writ of error is to the original decree, which did not award this writ of *habere facias*. It was awarded by a subsequent order of the court, to which no writ of error issued.

(*a*) March 13th, 1812. Present, all the judges.

TODD, J.—The attachment to compel a performance of the decree was unavailing; and upon the return of it, the *habere facias* was issued in conformity with the practice in that state, as admitted by the counsel on both sides in the court below. It was ordered as a matter of course, and no objection was made. If this motion should prevail, it will make the writ of error operate as a *supersedeas*, contrary to the intention of the act of congress.

Motion overruled.

MCKIM *v.* VOORHIES. (*a*)

Conflict of jurisdiction.

A state court has no jurisdiction to enjoin a judgment of the circuit court of the United States.[1]

THIS was a case certified from the Circuit Court for the district of Kentucky, in which the opinions of the judges were opposed.

At the July adjourned term of the court below, in the year 1808, McKim, a citizen of Maryland, recovered a judgment in ejectment against Voorhies, a citizen of Kentucky, for the undivided third part of a water-mill, with its appurtenances, in the county of Franklin, in the state of Kentucky. At the same time, Voorhies filed his bill in chancery, in the court below, against McKim, and John Instone, a citizen of Kentucky, and Hayden Edwards, a citizen of South Carolina, claiming an equitable lien on the said third part of the mill, &c., on account of contracts, &c., between Bennett Pemberton (under whom Voorhies held the premises) and Hayden Edwards and John Instone; Pemberton having *sold the said third part of the mill, &c., [*280
to Edwards, who sold to Instone, who sold and conveyed to McKim. Instone was the only defendant served with process from the court below. McKim and Instone answered the bill, and brought on a motion to dissolve the injunction on the merits, which was overruled by the court below.

At the term next preceding November term 1810 (Edwards not having answered), the court below dismissed the suit as to him; and as to Instone, for want of jurisdiction; after which, Voorhies had leave to discontinue as to McKim, on payment of costs. The suit was accordingly discontinued. Previous to this disposition of the cause, Voorhies filed his bill in chancery, against the same parties, in the state circuit court for the county of Franklin, in the state of Kentucky, in which he set up the same equity as he charged in his bill in the court below. On this bill he, by an order from one of the circuit judges of the state, obtained an injunction, staying all further proceedings on the said judgment in ejectment, until the matters of the said bill were heard in equity. This injunction was dissolved, at the July term of the Franklin circuit court; shortly after which, the said injunction was reinstated by the order of the Honorable Caleb Wallace, one

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(*a*) March 13th, 1812. Present, all the judges.

[1] City Bank *v.* Skelton, 2 Bl. C. C. 14, 26. Nor can a federal court enjoin proceedings in a state court. Diggs *v.* Walcott, 4 Cr. 179; Rogers *v.* Cincinnati, 5 McLean 337; Ex parte Dudley, 1 Clark (Pa.) 96; United States *v.* Collins, 21 Law Rep. 37; Butchers' Association *v.* Slaughter-house Co., 1 Abb. U. S. 338; Ex parte Campbell, Id. 183; Watson *v.* Jones, 13 Wall. 719.