this court the petition for *habeas corpus* which the petitioner on or about the seventeenth of December last presented "to the Hon. Lewis B. Woodruff, Circuit Judge of the United States for the Second Circuit, with the return thereto, and all the record of said court respecting the same, and the adjudication thereon, to the end that the errors therein may be corrected by this court, as more fully set forth in the petition."

Petitions of the kind when presented here are heard in the first place *ex parte*, and in view of that fact it is proper to remark that it has not escaped the attention of the court that the adjudication sought to be reviewed was made on a petition presented to the said circuit judge at chambers, but inasmuch as the petition here appears to warrant the inference that the first named petition and the proceedings thereon were subsequently filed in the Circuit Court, and that the same remain there of record, the court is of opinion that the special circumstance mentioned is no bar to the present application; and due consideration having been given to the petition, the court directs that the writ of *habeas corpus* issue to the person named and to the end as prayed.

Also that the writ of *certiorari* issue and that it be directed as prayed, and that it be made returnable forthwith.

Mr. Stewart L. Woodford for the petitioner.

For further proceedings in this case see *Ex parte Lange*, 18 Wall. 163.

BERGNER *v.* PALETHORP.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

No. 926. October Term, 1875. — Decided March 27, 1876.

A Federal question not raised at the trial of a cause in the state court below will not be considered here.

MOTION TO DISMISS for want of jurisdiction. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE announced the opinion of the court.

The motion to dismiss this cause for want of jurisdiction is granted. No Federal question is presented by the record. It is argued here that a certain paper writing given in evidence upon the trial in the Court of Common Pleas was not good and valid as a lease, because not stamped as such, but the record does not show that any such question was presented to the Supreme Court for de-

termination, or that it was decided, or that its decision was in any manner necessary to the judgment as rendered.

Mr. Robert Palethorp for the motion. *Mr. Samuel Gormley* and *Mr. W. S. Price* opposing.

MEYER *v.* PRITCHARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 171. October Term, 1876. — Decided January 15, 1877.

The surrender of letters patent for an invention extinguishes them; and if made after appeal to this court, no substantial controversy remains.

Motion to dismiss. The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

In *Moffitt* v. *Garr*, 1 Black, 273, we held that a surrender of a patent "means an act which, in the judgment of law, extinguishes the patent. It is a legal cancellation of it, and hence can no more be the foundation for the assertion of a right, after the surrender, than could an act of Congress which has been repealed. . . . The reissue of the patent has no connection with or bearing upon antecedent suits; it has as to subsequent suits. The antecedent suits depend upon the patent existing at the time they were commenced, and unless it exists and is in force at the time of trial and judgment the suits fail." To the same effect is *Reedy* v. *Scott*, 23 Wall. 352. We are satisfied with this ruling.

Since the appeal in this case, the appellants, who represent the original patentees, have surrendered the patent upon which the suit was brought and obtained a reissue. This fact is conceded. If we should hear the case and reverse the decree below, we could not decree affirmative relief to the appellants, who were the complainants below, because the patent upon which their rights depend has been cancelled. There is no longer any "real or substantial controversy between those who appear as parties to the suit" upon the issues which have been joined, and for that reason the appeal is dismissed, upon the authority of *Cleveland* v. *Chamberlain*, 1 Black, 419, and *Lord* v. *Veazie*, 8 How. 250.

The cause is remanded to the Circuit Court to be dealt with as law and justice may require.

Mr. George Harding and *Mr. J. Hervey Ackerman* for the motion. *Mr. B. F. Thurston* and *Mr. S. D. Law* opposing.