to an officer, for the delivery of a paper, was, in effect, the same as to sustain an original action for that paper, and therefore, seemed not to belong to appellate, but to original jurisdiction; and that, consequently, the authority given to this court by the 13th section of the judiciary act of 1789, to issue writs of *mandamus* to "persons holding office under the authority of the United States," was not warranted by the constitution. In McIntire *v.* Wood, 7 Cranch 504, it was decided, that the power of the circuit courts to issue writs of *mandamus*, is confined by the judiciary act of 1789, exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. That case was brought up from the circuit court of Ohio, upon a certificate, that the judges of that court were divided in opinion, upon the question, whether that court had the power to issue a writ of *mandamus* to the register of a land-office in Ohio, commanding him to issue a final certificate of purchase, to the *plaintiff, of certain lands in that state? In delivering the opinion of the court, Mr. Justice Johnson stated that, "Had the 11th section of the judiciary act covered the whole ground of the constitution, there would be much reason for exercising this power in many cases, wherein some ministerial act is necessary to the completion of an individual right, arising under the laws of the United States, and the 14th section of the same act would sanction the issuing of the writ for such a purpose. But although the judicial power of the United States extends to cases arising under the laws of the United States, the legislature has not thought proper to delegate the exercise of that power to its circuit courts, except in certain specified cases. When questions arise under those laws in the state courts, and the party who claims a right or privilege under them is unsuccessful, an appeal is given to the supreme court, and this provision the legislature has thought sufficient, at present, for all the political purposes intended to be answered by the clause of the constitution which relates to this subject." The power of the supreme court to issue writs of *mandamus* to the other courts of the United Statet, has been frequently exercised. United States *v.* Peters, 5 Cranch 115; Livingston *v.* Dorgenois, 7 Id. 577. But in the case of Hunter *v.* Martin's Lessee, 1 Wheat. 304, the court, in pronouncing its opinion upon its appellate jurisdiction, in causes brought from the highest court of law or equity of a state, deemed it unnecessary to give any opinion on the question, whether this court has authority to enforce its own judgments on appeal, by issuing a writ of *mandamus* to the state court, as the question was not thought necessarily involved in the decision of that cause. Id. 362.

[*371

The London Packet: Merino, Claimant.

Prize.—Evidence.

It is the practice of this court, in prize causes, to hear the cause, in the first instance, upon the evidence transmitted from the circuit *court, and to decide, upon that evidence, whether it is proper to allow further proof. [*372

Affidavits to be used as further proof, in causes of admiralty and maritime jurisdiction, in this court, must be taken by a commission.

March 5th, 1817. In the argument of this cause, *Winder*, for the claimant, stated, that there was an affidavit annexed to the record, which was taken under the order for further proof, in the court below, but which, not arriving until after the decree of condemnation was pronounced, was ordered by the circuit court, to be transmitted, *de bene esse*, for the consideration of this court. He further stated, that he had additional proofs, taken since that time, to be used in this court; and he asked, whether he should now be permitted to read these proofs, in order to show what was the nature of the evidence which existed, to clear away any former doubts in the cause.

Marshall, Ch. J.—The court is of opinion, that the affidavit transmitted

from the circuit court may be now read. But as to the new proof now offered by the claimant, it is the practice of this court, to hear the cause, in the first instance, upon the evidence transmitted from the circuit court, and to decide, upon that evidence, whether it is proper to allow further proof. The new proof cannot, therefore, be now read; but as the opposite party wishes it, the counsel may state the nature of the proof, though not the con-
*373] tents thereof in detail. If the *case shall ultimately appear entitled to further proof, an order will be made for that purpose.

March 10th. Further proof was ordered in the cause.

March 13th. *D. B. Ogden*, for the claimant, offered to read affidavits, as further proof, which had not been taken under a commission. But they were rejected by the court; the cause was continued to the next term; and the further proof ordered to be taken under a commission, according to the rule of court of the present term.

Cause continued.(*a*)

Lenox *et al. v.* Roberts.

Equity.—Notice of non-payment.

Where all the property of the late Bank of the United States had been assigned, by a general assignment, in trust, to assignees, for the purpose of liquidating its affairs, *Quære?* Whether any action at law could be maintained by the assignees, on certain promissory notes, indorsed to, and the property of the bank, which had not been specially assigned nor indorsed to the assignees?

However this may be, it is clear, that a suit in equity might be maintained by the assignees against the parties to the notes.

*374] A demand of payment of a promissory note must be made of the maker, on the last day of grace; and where the indorser resides in a *different place, notice of the default of the maker should be put into the post-office, early enough to be sent by the mail of the succeeding day.[1]

This was a suit in chancery, brought by the appellants against the respondent, in the Circuit Court of the District of Columbia, for the county of Alexandria.

The complainants, in their bill, stated, that the president, directors and company of the Bank of the United States, by their deed, assigned to Thomas Willing, John Perot and James S. Cox, their executors, administrators and assigns, all and singular the mortgages, judgments, suits, bonds, bills, notes, debts, securities, contracts, goods, chattels, money and effects whatsoever, due or belonging to the bank; together with all the ways, means and remedies for the recovery of the same, upon the special trust in the deed expresssed. That Thomas Willing, John Perot and James S. Cox, afterwards assigned to the complainants, all and singular the debts included in the deed to them. The bill further stated, that one Elisha Janney, made and delivered to the defendant five promissory notes, dated and payable at Washington, and for the following sums, to wit, one note for $1000, payable in sixty days from the 22d February 1809, &c.; amounting in the whole, to $4020. That the

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(*a*) *Vide* Appendix, note I.

[1] Austen *v.* Miller, 5 McLean 153; s. c. 13 How. 218.