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.

defendant discounted the said notes in the Branch Bank of the United States, at Washington, about the times they bear date, and indorsed the same at Washington. That Janney did not pay the notes when they became due, and that he was insolvent when the notes *became due. That the notes, being made and dated in the county of Washington, were sub- [*375 ject to the laws prevailing in Washington county, and the defendant bound to pay, on the failure of Janney to pay. The complainants claimed these debts as proprietors thereof; and called on the defendant specially to state, whether Janney was not insolvent, when the notes became due; whether the said notes were not duly protested for non-payment, and the defendant in due time notified thereof, and did not attempt to secure himself by some lien on Janney's property. The bill concluded by praying a decree against the defendant, for the amount of said notes.

The defendant, in his answer, did not admit that the complainants were duly authorized to recover and receive the debts due to the bank; but he admitted, that the notes were by him indorsed in blank, and delivered to Janney, but contended, that they were not obtained to be discounted in the Bank of the United States, nor were discounted for the benefit of the defendant, but for the use and benefit of Elisha Janney, who received the money from the bank. And that it was well known to the president and directors of the bank, that the said notes were indorsed by the defendant for the accommodation of the said Elisha Janney, without any value being received by the defendant. The defendant's answer further alleged, that due and legal notice was not given him of the non-payment of the notes; that no demand of payment of the notes was made of Elisha Janny, by the bank; that the notes were all dated at Alexandria; that Elisha Janney, on the *29th of May, conveyed all his property to Richard M. Scott, in [*376 trust for the payment of his debts, including the debt to the bank.

There was some contrariety of evidence as to the time when payment of the notes was demanded of the maker, and the time when notice to the defendant, as indorser, who resided in Alexandria, was put into the post-office at Washington. The bill was dismissed by the court below, on which the cause was brought by appeal to this court.

March 13th, 1817. The cause was argued by *Swann*, for the appellants, and by *Lee*, for the respondent.

March 15th. MARSHALL, Ch. J., delivered the opinion of the court.—The court will not give any opinion, whether any action can be maintained at law, upon any of the promissory notes in the record, by an assignee who does not claim the same by an indorsement upon the notes. For, in this case, there is no specific assignment of these notes; the only assignment is a general assignment, in trust, of all the property of the late Bank of the United States, and as the act of incorporation had expired, no action could be maintained at law by the bank itself. Under these circumstances, the court is clearly of opinion, that a suit may be maintained in equity against the other parties to the notes.

Another question arises in the cause, whether the indorsers have had due notice of the non-payment by the makers. As there is some *contra- [*377 riety of evidence in the record, the court will only lay down the rule. And it is the opinion of the court, that a demand of payment should

be made upon the last day of grace, and notice of the default of the maker be put into the post-office, early enough to be sent by the mail of the succeeding day.

Decree reversed.

Colson *et al. v.* Lewis.

Jurisdiction.

The jurisdiction of the circuit courts of the United States extends to a case between citizens of Kentucky, claiming lands, exceeding the value of $500, under different grants, the one issued by the state of Kentucky, and the other by the state of Virginia, but upon warrants issued by Virginia, and locations founded thereon, prior to the separation of Kentucky from Virginia. It is the grant which passes the legal title to the land; and if the controversy is founded upon the conflicting grants of different states, the judicial power of the courts of the United States extends to the case, whatever may have been the equitable title of the parties, prior to the grant.

March 14th, 1817. The opinion of the court in this cause was delivered by Washington, Justice.—This suit in equity was removed into the Circuit Court of Kentucky, upon the petition of the defendant, filed in the state court; and upon a motion made in the circuit court, to dismiss the suit from
*378] *that jurisdiction, the judges of that court were opposed in opinion, and caused the following facts to be stated, to enable this court to decide the question. Those facts are, that the value of the land in controversy exceeds $500; that the complainants are citizens of Virginia; and that the grant, under which they claim title, is derived from the state of Kentucky, by virtue of warrants issued from the land-office of Virginia, and locations upon the warrants, before the separation of Kentucky from Virginia: that the defendant's grant is from the state of Virginia, by virtne of a warrant issued from the land-office, and a location made thereon, before the separation of Kentucky.

The question referred to this court is, whether the circuit court for the district of Kentucky can take jurisdiction of the cause, because the grants for the land in controversy, lying in Kentucky, were issued, the one by the state of Virginia, and the other by the state of Kentucky, when both grants purport to be founded upon warrants and locations made under the authority of the laws of Virginia?

It is the opinion of this court, that the question which is referred to us, by the circuit court of Kentcky, is settled by the decision of this court, in the case of the *Town of Pawlet* v. *Clark and others*, 9 Cranch 292. The only difference between the two cases is, that in the case referred to, both parties claimed immediately under grants, the one from the state of Vermont, and the other from the state of New Hampshire, before the separa-
*379] tion, which grants were *the inception of title; and that, in this case, both parties claim under grants, the one issued by the state of Kentucky, and the other by the state of Virginia, but upon warrants issued by Virginia, and locations founded thereon, prior to the separation of Kentucky from Virginia. But where the controversy arises upon claims founded upon grants from different states, as the present case is understood to be, the principle decided in the case which has been cited, precisely governs this. The decision in that case is founded on the words of the consti-