or Law. That he was not to be considered as a subsequent incumbrancer, is conclusively determined by this consideration, that there would then have been no equity of redemption outstanding in any one. In the relation of the assignee of an equity of redemption, he appeared first in this court, and it is obvious from the former decree, that in that light only did this court view him. In this light, he could lay claim to no rights inconsistent with those of the creditor; and, so far as the proceeds of the 13 lots were adequate to satisfying Duncanson, he could be entitled to nothing, until that debt was paid. Any other application of the proceeds of those lots would be preferring the mortgagor to the mortgagee, or the debtor to the creditor; and confer on the assignee of the equity of redemption, a greater equity against the mortgagee, than could have been decreed to the original mortgagor.

That part of the decision of the circuit court, will, therefore, be affirmed. But of the remaining two points, it will be necessary to refer the subject, in order to have the statements and evidence in this record compared, upon which a conclusion must be formed. If this appellant has been charged
*433] with a greater amount than his just ratio of the debt due to *Law, he is entitled to relief. But the principles being established, this becomes a mere matter of numerical calculation.

Decree accordingly.

The Atalanta: Faussat, Claimant.

Prize.

A question of proprietary interest on further proof. Condemnation pronounced.

This cause was continued at February term 1818 (3 Wheat. 409), for further proof, but the further proof received at the last term being unsatisfactory, it was again continued, on account of some peculiar circumstances in the case, to the present term, when no further proof being produced, condemnation was pronounced.

Decree reversed.

---

*434 *United States *v.* Lancaster.

Certificate of division.

The district judge cannot sit, in the circuit court, in a cause brought by writ of error from the district to the circuit court, and the cause cannot, in such a case, be brought from the circuit to this court, upon a certificate of a division of opinion of the judges.

This was an action of debt, originally brought in the District Court of Pennsylvania, and carried by writ of error to the Circuit Court, from which it was brought to this court, upon a case agreed by the parties, and a certificate that the opinions of the judges were opposed upon a question arising in the cause.

March 10th, 1820. The cause was argued by *C. J. Ingersoll*, for the plaintiffs, and by *Sergeant*, for the defendant.

March 17th. MARSHALL, Ch. J., delivered the opinion of the court, that it had no jurisdiction of the cause, as the district judge could not sit in the circuit court, on a writ of error from his own decision, and consequently, there could be no division of opinion to be certified to this court.(*a*)

*JUDGMENT.—This cause came on to be heard, on the transcript of the record of the circuit court for the district of Pennsylvania, and was [*435 argued by counsel: on consideration whereof, it was adjudged and ordered, that the said cause be remanded to the said circuit court, it not appearing from the said transcript that this court has jurisdiction in said cause.

(*a*) Neither can a cause be brought to this court by writ of error, which has been carried from the district to the circuit court by writ of error. United States *v.* Barker, 2 Wheat. 395.