was no sufficient proof of notice having been sent by mail, or of the contents of the letter sent; and that before secondary evidence would be *let in to prove the contents, notice should have been given to the defendant to produce it.

*106]

The Court were unanimously of opinion, that after demand of the maker on the third day of grace, notice to the indorser, on the same day, was sufficient, by the general law-merchant; and that evidence of the letter containing notice having been put into the post-office, directed to the defendant, at his place of residence, was sufficient proof of the notice, to be left to the jury; and that it was unnecessary to give notice to the defendant to produce the letter, before such evidence could be admitted.

Judgment reversed.

Mechanics' Bank of Alexandria *v.* Withers.

Opening default.

The circuit court for the district of Columbia has authority to adjourn to a distant day, and the adjourned session is considered as the same term.

The regular term began on the 3d Monday in April, and the court continued to sit, *de die in diem*, until the 16th of May, when it adjourned to the 4th Monday of June: *held*, that a defendant, against whom an office-judgment had been entered on the 16th of May, had a right, under the law and practice of Virginia, to appear at the adjourned session, and have the default set aside, on giving special bail, and pleading issuably.

Error to the Circuit Court for the District of Columbia.

*This cause was argued by *Lee* and *Swann*, for the plaintiff in error, and by *Taylor*, for the defendant in error.

*107]

February 9th, 1821. Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment rendered by the circuit court for the district of Columbia, sitting in Alexandria, in an action of debt; and the case depends on the laws of Virginia, as they stood when jurisdiction over the district was first exercised by congress.

By the law of Virginia, the proceedings, until an issue is made up in a cause, are taken in the clerk's office, at monthly rules, and judgments by default become final, on the last day of the succeeding term, until which day the defendant in any such action has a legal right to set the judgment aside, and to plead to issue. The circuit court held its regular session in April 1818, and continued to sit regularly until the 16th day of May, when it adjourned to the fourth Monday of the following June. The clerk, considering the day on which the court adjourned as the last day of the term, and the judgments at the rules as having, on that day, become final, issued an execution on one of these judgments, which had been obtained by the plaintiffs against Cave Withers and his common bail. When the court met in June, the defendant appeared, and, on motion, was allowed to set aside the office-judgment, give special bail, and plead to issue. The execution was, consequently, quashed. In the course of the term, judgment *was confessed by the defendant, for the sum claimed in the declaration, and a writ of error was then sued out, the object of which was to reverse the last judgment, and set aside all proceedings subsequent to the

*108]

16th of May, on the idea, that the judgment rendered at the rules became final on that day. The sole question in the cause is, whether the adjournment from the 16th of May to the fourth Monday in June, was a continuaof the April term, or constituted a distinct term?

There being nothing in any act of congress which prevents the courts of the district from exercising a power common to all courts, that of adjourn ing to a distant day; the adjournment on the 16th of May to the fourth Monday in June, would be a continuance of the same term, unless a special act of congress, expressly enabling the courts of the district to hold adjourned sessions, may be supposed to vary the law of the case. That act is in these words: "and the said courts are hereby invested with the same power of holding adjourned sessions that are exercised by the courts of Maryland." These words do not, in themselves, purport to vary the character of the session; they do not make the adjourned session a distinct session. They were, probably, inserted, from abundant caution, and are to be ascribed to an apprehension, that courts did not possess the power to adjourn to a distant day, until they should be enabled so to do by a legislative act. But this act, affirming a pre-existing power, ought not to be construed, to vary the nature of that power, unless words are employed which manifest *such intention. In this act, there are no such words, unless they are found in the reference to the courts of Maryland. But on inquiry, [*109 we find, that in Maryland, an "adjourned session" is considered as the same session with that at which the adjournment was made. Since, then, the term at which this conditional or office-judgment was to become final, was still continuing, when it was set aside, and the defendant permitted to plead to the declaration, there was no error in that proceeding.

Judgment affirmed.

Hopkins *v.* Lee.

Judgment.—Damages.

A judgment or decree of a court of competent jurisdiction is conclusive, wherever the same matter is again brought in controversy.

But the rule does not apply to points which come only collaterally under consideration, or are only incidentally considered, or can only be argumentatively inferred from the decree.[1]

In an action at law, by the vendee, against the vendor, for a breach of the contract, in not delivering the thing sold, the proper measure of damages is not the price stipulated in the contract, but the value at the time of the breach.[2]

This rule applies to the sale of real, as well as personal property:[3] but *quære?* whether it is the proper measure of damages, in the case of an action for eviction?

Error to the Circuit Court for the District of Columbia. This was an action of covenant, brought by the defendant *in error (Lee), against [*110 the plaintiff in error (Hopkins), to recover damages for not convey-

[1] Holmes *v.* Trout, 7 Pet. 206; Hibshman *v.* Dulleban, 4 Watts 183; Lentz *v.* Wallace, 17 Penn. St. 412; Martin *v.* Gernandt, 19 Id. 124; Tams *v.* Lewis, 42 Id. 402, Lewis's Appeal, 67 Id. 153.

[2] Edgar *v.* Boies, 11 S. & R. 445; Smethurst *v.* Woolston, 5 W. & S. 106; Blydenburgh *v.* Welsh, Baldw. 331; Halsey *v.* Hind, 6 McLean 102.

[3] Brinckerhoff *v.* Phelps, 24 Barb. 100; s. c. 43 Id. 469.