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.

ing certain tracts of military lands, which the plaintiff in error had agreed to convey, upon the defendant in error relieving a certain incumbrance, held by one Rawleigh Colston, upon an estate called Hill and Dale, and which Lee had previously granted and sold to Hopkins, and for which the military lands in question were to be received in part payment.

The declaration set forth the covenant, and averred that Lee had completely removed the incumbrance from Hill and Dale. The defendant below pleaded: 1. That he had not completely removed the incumbrance: 2. That he (the defendant below) had never been required by Lee to convey the military lands to him: and on these pleas issues were joined.

Upon the trial, Lee, in order to prove the incumbrance in question was removed, offered in evidence to the jury a record of the proceeding in chancery, on a bill filed against him in the circuit court, by Hopkins. The bill stated, that on the 23d of January 1807, the date of the agreement on which the present action at law was brought, Hopkins purchased of Lee, the estate of Hill and Dale, for which he agreed to pay $18,000: viz., $10,000 in military lands, at settled prices, and to give his bond for the residue, payable in April 1809. That Lee, in pursuance of this agreement, selected certain military lands in the bill mentioned. That at the time of the purchase of Hill and Dale, it was mortgaged to Colston for a large sum, which Lee had promised to discharge, but had failed so to do, in consequence of which
*111] Hopkins had paid off the *mortgage himself. The bill then claimed a large sum of money from Lee, for having removed this incumbrance, and prayed that the defendant might be decreed to pay it, or in default thereof, that the claimant might be authorized, by a degree of chancery, to sell the military lands, which he considered as a pledge remaining in his hands, and out of the proceeds thereof, to pay himself. On the coming in of Lee's answer, denying several of the allegations of the bill, the cause was referred to a master, who made a report, stating a balance of $427.77, due from Hopkins to Lee. This report was not excepted to, and the court, after referring to it, proceeded to decee the payment of the balance. To this testimony, the defendant in the present action objected, so far as respected the reading of the master's report, and the decretal order thereon; but the objection was overruled by the court below, and the evidence admitted.

The counsel for the plaintiff in error then prayed the court to instruct the jury, that in the assessment of damages, they should take the price of the military lands as agreed upon by the parties, in the articles of agreement upon which the action was brought, as the measure of damages for the breach of covenant. But the court refused to give this instruction, and directed the jury to take the price of the lands, at the time they ought to have been conveyed, as the measure of damages. To this instruction, the plaintiff in error excepted; and a verdict and judgment thereon, being rendered for the plaintiff below, the cause was brought by writ of error to this court.

*112] **Pinkney* and *Swann*, for the plaintiff in error, argued: 1. That the proceedings in chancery were not admissible evidence in the action at law. A verdict and judgment are indeed conclusive evidence between the same parties; but the other proceedings in the cause, and all that which is merely inducement to the verdict or judgment, are not evidence. So, a

decree in chancery is not conclusive evidence of all the facts in the course of the cause. Not that the decree is not conclusive as a *res judicata:* but the decree here is no otherwise conclusive, than as giving the party, in whose favor it was pronounced, a right to have it executed. It is not evidence at all, unless it be conclusive evidence: but it cannot be conclusive evidence of the details of the cause, and of the incidental questions which arose in its progress.

2. The proper measure of damages in the action at law, was the price agreed by the parties. When a portion of the price of land is to be paid for in other land, the pecuniary, price, with interest, is the rule at law, where specific performance is not called for. It is thus subjected to the analogical rule in the court of chancery, where the contract is rescinded, instead of being specifically performed.

Jones and *Lee*, for the defendant in error, insisted: 1. That the proceedings in chancery were not only admissible evidence in the suit at law, but conclusive evidence. It may be safely admitted, that the decree is not evidence of such facts as are only collaterally or incidentally drawn in question, *or can only be argumentatively inferred from the decree. But [*113
where the decree professes to be founded on a particular fact, which was the principal question in issue, and was ascertained by the master's report, it must be conclusive, in any other suit between the same parties.

2. As to the proper measure of damages, it is the settled doctrine of this court, that in an action by the purchaser for a breach of the contract of sale, the rule of damages is the price of the article, at the time of the breach. (*Shepherd* v. *Hampton*, 3 Wheat. 200.) It is true, that the case of *Shepherd* v. *Hampton*, was a sale of goods; but it is not perceived, that there is any difference in the application of the principle to real or to personal property.

February 12th, 1821. LIVINGSTON, Justice, delivered the opinion of the court.—The first question which this court has to consider is, whether the proceedings in chancery were properly admitted in evidence in the court below. It is not denied, as a general rule, that a fact which has been directly tried, and decided by a court of competent jurisdiction, cannot be contested again between the same parties, in the same or any other court. Hence, a verdict and judgment of a court of record, or a decree in chancery, although not binding on strangers, puts an end to all further controversy concerning the points thus decided, between the parties to such suit. In this, there is and ought to be, no difference between a verdict and judgment *in a court of common law, and a decree of a court of equity. They [*114
both stand on the same footing, and may be offered in evidence under the same limitations, and it would be difficult to assign a reason why it should be otherwise. The rule has found its way into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation. It is, therefore, not confined, in England or in this country, to judgments of the same court, or to the decisions of courts of concurrent jurisdiction, but extends to matters litigated before competent tribunals in foreign countries. It applies to sentences of courts of admiralty; to ecclesiastical tribunals; and, in short, to every court which has proper cognisance of the subject-matter, so far as they profess to decide the particular matter in dispute.

Under this rule, the decree in this case was proper evidence, if it decided, or professed to decide, the same question which was made on the trial at law. For to points which came only collaterally under consideration, or were only incidentally under cognisance, or could only be inferred by arguing from the decree, it is admitted, that the rule does not apply. On a reference to the proceedings at law, and in chancery, in the case now before us, the court is satisfied, that the question which arose on the trial of the action of covenant, was precisely the same, if not exclusively so (although that was not necessary), as the one which had already been directly decided by the court of chancery. The bill, which was filed by the present plaintiff *115] in error, states, that on the 23d of January *1807, which is the date of the agreement on which the action at law is brought, Hopkins purchased of Lee the estate of Hill and Dale, for which he was to pay $18,000—that is, $10,000 in military lands, at settled prices, and the remainder in bonds, payable in April 1809. That Lee, in pursuance of this agreement, selected certain military lands in the bill mentioned. That at the time of the purchase of Hill and Dale, it was mortgaged to Rawleigh Colston for a large sum, which Lee had promised to discharge, but that he had failed so to do, in consequence of which, Hopkins had paid the mortgage himself. The complainant then claims a large sum from Lee for having removed this incumbrance, and prays that the defendant may be decreed to pay it, or in default thereof, that the complainant may be authorized, by a decree of the court, to sell the military lands, which he considered as a pledge in his hands, and out of the proceeds to pay himself. Not a single demand is stated in the bill, except the one arising out of the complainant's extinguishment of the incumbrance, which Lee had taken upon himself to remove.

On Lee's answer coming in, denying several of the allegations of the bill, the cause is referred to a master commissioner, who, after a long investigation, in the presence of both parties, and the examination of many witnesses, makes a report by which Hopkins is made a debtor of Lee in the sum of $427.77. On inspection of this report, it will be seen, that the chief, if not the only controversy between the parties was, whether Hill and Dale had *116] been relieved *from its incumbrance to Colston, by funds furnished by Lee to Hopkins for that purpose, and that unless that fact had been found affirmatively, a report could not have been made in Lee's favor. The court, after referring to this report, and stating that it had not been excepted to, proceeds to decree the payment of this balance by the complainant to the defendant. From this summary review of the proceedings in chancery, the conclusion seems inevitable, that the chief, if not sole matter in litigation in that suit, was, whether Hill and Dale had been freed of the incumbrance to Colston, by Lee or by Hopkins, and that the report and subsequent decree proceeded on the ground, and established the fact, that Lee had discharged it, which was also the only point put in issue by the first plea of the defendant, in the action of covenant. No rule of evidence, therefore, is violated, in saying that this decree was properly admitted by the circuit court.

But if the decree were admissible, it is supposed, thet the report of the master ought not to have been submitted to the jury. The court entertains a different opinion. No reason has been assigned why a decision by a proper and sworn officer of a court of chancery, in the presence and hearing of both

parties, according to the acknowledged practice and usage of the court, on the very matters in controversy, not excepted to by either party, and confirmed by the court, should not be as satisfactory evidence of any fact found by it, as the verdict of a jury, on which a judgment is afterwards rendered. The advantage which a verdict may be supposed to possess over a report, from its *being the decision of twelve, instead of the opinion of a single man, is, perhaps, more than counterbalanced by the time which [*117 is allowed to a master for deliberation, and a more thorough investigation of the matters in controversy. But a better and more satisfactory answer is, that it is the usual, known and approved practice of the court to whose jurisdiction the parties had submitted themselves. But if this document be witheld from a jury, how are they or the court to arrive at the grounds of the decree, or a knowledge of the points or matters which have been decided in the cause? Without it, the decree may be intelligible; but the grounds on which it proceeds, or the facts which it means to decide, may be liable to much uncertainty and conjecture. The report, therefore, as well as the decree, was proper evidence, not only of the fact that such report and decree had been made, but of the matter which they professed directly to decide. We are not now called upon to say, whether, in those respects, they were conclusive, as they do not appear to have been offered with that view; but without meaning to deny to them such effect, we only say, which is all that the present case requires, that they were competent and proper, in the absence of other testimony, to establish the fact of the removal of the incumbrance by the defendant Lee, from the estate of Hill and Dale.

In the assessment of damages, the counsel for the plaintiff in error, prayed the court to instruct the jury, that they should take the price of the land, as agreed upon by the parties, in the articles of agreement upon which the suit was brought, for their government. *But the court refused [*118 to give this instruction, and directed the jury to take the price of the lands, at the time they ought to have been conveyed, as the measure of damages. To this instruction the plaintiff in error excepted. The rule is settled in this court, that in an action by the vendee for a breach of contract on the part of the vendor, for not delivering the article, the measure of damages is its price, at the time of the breach. The price being settled by the contract, which is generally the case, makes no difference, nor ought it to make any; otherwise, the vendor, if the article have risen in value, would always have it in his power to discharge himself from his contract, and put the enhanced value in his own pocket. Nor can it make any difference in principle, whether the contract be for the sale of real or personal property, if the lands, as is the case here, have not been improved or built on. In both cases, the vendee is entitled to have the thing agreed for, at the contract price, and to sell it himself at its increased value. If it be withheld, the vendor ought to make good to him the difference. This is not an action for eviction, nor is the court now prescribing the proper rule of damages in such a case.(a)

Judgment affirmed.

(a) As to the damages recoverable upon an eviction of real property, see 2 Wheat. 62, note.