

## The Antelope.

the policy was executed, the question might have arisen, whether it was necessary further to prove its legal validity in all other respects. The argument at the bar, drawn from the known law as to forgeries, is, we think, pertinent. In those cases, when they depend on the common law, actual prejudice is not necessary to be proved; and, of course, the validity of the instrument is entirely waived.

\*412] Another question, not raised in the court below, has been argued here, and upon which, at it is vital to the prosecution, we feel ourselves called upon to express an opinion. It is, that a corporation is not a *person* within the meaning of the act of congress. If there had been any settled course of decision on this subject, in criminal cases, we should certainly, in a prosecution of this nature, yield to such a construction of the act. But there is no such course of decisions. The mischief intended to be reached by the statute is the same, whether it respects private or corporate persons. That corporations are, in law, for civil purposes, deemed persons, is unquestionable. And the citation from 2 Inst. 736 establishes, that they are so deemed within the purview of the penal statutes. Lord Coke, there, in commenting on the statute of 31 Eliz., ch. 7, respecting the erection of a cottage, where the word used is, "no person shall," &c., says, "this extends as well to persons politic and incorporate, as to natural persons whatsoever." In the case of the *King v. Harrison*, 1 Leach 180, 2 East P. C. 927, 988, it may, perhaps, be matter of some doubt, whether the point was actually decided by the court. But, if it was, it mainly rested upon a peculiarity of construction which grew out of the statute of 31 Geo. II., ch. 22, § 78, which professed to cure doubts of the meaning of these words in other antecedent statutes upon similar subjects, leaving that on which the indictment was \*413] framed untouched. Finding, therefore, no authority at \*common law, which overthrows the doctrine of Lord Coke, we do not think that we are entitled to engraft any such constructive exception upon the text of the statute.

Upon the whole, it is to be certified to the circuit court of Virginia, that the decisions of that court, upon the points of law arising at the trial, were correctly decided.

CERTIFICATE.—This cause came on to be heard on the certificate of division of opinions of the judges of the circuit court, &c. : On consideration whereof, it is adjudged by the court, that it be certified to the said circuit court, that the points of law ruled by the said circuit court at the trial of the cause, and upon which the same court, upon a motion for a new trial, were divided in opinion, were, in all respects, correctly decided by the said court at the said trial.

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The ANTELOPE: The Vice-Consuls of Spain and Portugal, Libellants.

Explanation of the former decree of the court in the same cause. 10 Wheat. 66.

CERTIFICATE.—A mandate having issued to the Circuit Court for the District of Georgia, to \*carry into execution the decree of this \*414] court pronounced at the February term 1825, to deliver certain Africans, in the said decree mentioned, to the Spanish consul, for Spanish claimants, and the judges of that court having been divided in opinion,

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respecting the mode of designating the said slaves so to be delivered to the United States, whether the same should be made by lot, or upon proof on the part of the Spanish claimant, it is ordered to be certified to the said circuit court of Georgia, that in executing the said mandate, the Africans to be delivered must be designated by proof made to the satisfaction of that court.

WILLIAMS, Plaintiff in error, v. The PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES, Defendants in error.

*Error to joint judgment.*

Where there is a joint judgment against several defendants, and one only sues out the writ of error, without joining the others, it is irregular; but if the others refuse to join in it, *quære?* whether the plaintiff may not have summons and severance?<sup>1</sup>

March 8th, 1826. In this case, in which *Wright* was for the \*plain- [415  
tiff in error, and *Webster*, for the defendants:—

MARSHALL, Ch. J., stated, that the writ of error must be dismissed, it having issued irregularly. The judgment in the circuit court of Ohio was a joint judgment, upon a joint action for money lent, against three defendants; and the writ of error was sued out by one of the defendants, in his own name only, without joining the others. The court was of opinion, that the writ of error ought to have been in the name of the three; and if the others should refuse to join in it, that it would deserve consideration, whether the present plaintiff might not have summons and severance.

Writ of error dismissed.

BARNES and others v. WILLIAMS.

*Special verdict.*

Where, in a special verdict, the essential facts are not distinctly found by the jury, although there is sufficient evidence to establish them, this court will not render a judgment upon such an imperfect special verdict, but will remand the cause to the court below, with directions to award a *venire facias de novo*.<sup>1</sup>

February 6th, 1826. This case was argued by *Wickliffe* and \**Talbot*, for the plaintiffs; and by *White* and *Isaacks*, for the [416  
defendant.

MARSHALL, Chief Justice, stated, that, upon inspecting the record, it had been discovered, that the special verdict found in the case was too imperfect to enable the court to render a judgment upon it. The claim of the plaintiffs being founded upon a bequest of certain slaves, it was essential to a recovery at law, that the assent of the executor to the legacy should be proved. Although, in the opinion of the court, there was sufficient evidence in the special verdict from which the jury might have found the fact, yet they have not found it, and the court could not, upon a special verdict,

<sup>1</sup> *Wilson v. Life and Fire Ins. Co.*, 12 Pet. 140; *Wend.* 621; *Thompson v. Valarino*, 3 Den. Todd v. Daniel, 16 Id. 521; *Fotteral v. Floyd*, 179.  
6 S. & R. 315. See *Fenner v. Bettner*, 22 <sup>2</sup> *McArthur v. Porter*, 1 Pet. 626.