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way of the investigation of the title on its real merits. We do not think such a defence is made out by the defendants, as to justify an affirmance of the decree dismissing the bill; nor are we satisfied, that the state of the record is such as to enable this court safely to decree, that the defendants shall convey the lands they hold within the patent of the plaintiffs. The decree, therefore must be reversed, and the cause remanded to the circuit court, that further proceedings may be had therein, according to equity.

DECREE.—This cause came on, &c.: On consideration whereof, this court is of opinion, that the right of the plaintiffs was preserved by the act giving further time to the owners of the lands to survey the same, and for returning plats and certificates to the register's office, passed in the year 1797, and that the survey on which the patent was founded was made in time: This court doth, therefore, reverse the decree of the circuit court, dismissing the bill of the plaintiffs, and doth remand the cause to the said circuit court, that further proceedings may be had therein, according to equity.

*CARNOCHAN & MITCHEL v. CHRISTIE and another.

[*446]

Award.—Cross-bill.

An award must decide the whole matter submitted to the arbitrators; it must not extend to any matter not comprehended in the submission; and it must be certain, final and conclusive of the whole matter referred.²

Where the arbitrators determined that the plaintiffs should be entitled to a credit of a certain sum, on account of sales of lands to the defendant, provided "they shall grant, or cause to be granted, to the said W. C. (the defendant), a clear, unincumbered, and satisfactory title" to the lands, without limiting any time within which the title should be made: *Held*, that the award was void, as not being final and conclusive.

A court of equity either enforces an award as it is made, or sets it aside, if in any respect defective; but it is contrary to its practice, to confirm the award so far as it extends, and to supply omissions by decree of the court.

Where a bill is filed to set aside an agreement or conveyance, the conveyance cannot be established, without a cross-bill filed by the defendant.³

APPEAL from the Circuit Court of Georgia.

March 10th, 1826. This cause was argued by *Webster* and *Berrien*, for the appellants; (a) and by **Emmet* and *D. B. Ogden*, for the respondents. (b) [*447]

(a) They cited, as to the necessity of a cross-bill by the defendants, in order to establish the conveyances, 2 Madd. Ch. 329; 2 Atk. 133; 1 Ball. & Beat. 217; 2 Cox 78. As to the manner in which a court of equity acts upon an award, either by confirming it *in toto* or rejecting it, 1 Bro. C. C. 389; 3 Id. 163; 1 Ves. jr. 365; 2 Id. 22; 4 Bro. C. C. 117, 536. As to the necessity of the award extending to all the matters of reference, 7 East 81. As to the uncertainty and inconclusiveness of the award, 7 T. R. 69.

(b) To show that an award might be good in part, and void as to the residue, they cited 5 Wheat. 394; 3 Desauss. 11; 14 Johns. 36; Kyd on Awards 243, 261, and the cases there collected.

¹ For a further decision in this case, see 6 Pet. 61.

² De Groot v. United States, 5 Wall. 419.

³ The more modern course of proceeding is,

to dispense with the cross bill, and make the same decree upon the answer to the original bill, that would be made, if a cross-bill had been filed, if the defendant submits in his answer to

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March 14th. MARSHALL, Ch. J., delivered the opinion of the court. — Carnochan & Mitchel, the plaintiffs, were merchants in Georgia, who had extensive commercial transactions with the defendant, William Christie, a merchant of Liverpool, in the course of which the former became indebted to the latter to a large amount. In 1819, John Carnochan, one of the firm of Carnochan & Mitchel, visited England, in the expectation of selling immense tracts of land he had purchased in Florida, and, during his residence in that country, his partner, Peter Mitchel, relying, probably, on the sale of lands, continued to draw heavily on the defendant, William Christie, without making correspondent remittances. Carnochan being unable to sell his lands, and thus to place funds in the hands of Christie, these bills produced great embarrassments, and frequent communications between the parties, in the course of which, Carnochan pressed Christie most earnestly to proceed with his acceptances, and promised to secure him by the pledge of his Florida lands, and property in Georgia. At length, deeds of these lands, and other property, were executed, and the accounts settled between the parties. An account was stated, and signed *by them, showing *448] a balance of 43,293*l.* 6*s.* 4*d.*, due to Christie, for which sum Carnochan gave the promissory note of Carnochan & Mitchel, dated —.

Soon after the execution of these deeds, Carnochan returned to Georgia, and considerable payments were made. But the debt still remaining considerable, the agent of Christie caused the deeds to be recorded, and apprehensions were entertained, that he would proceed to sell the property. In June 1820, Carnochan & Mitchel filed their bill in the circuit court of the United States for the district of Georgia, alleging that the account was unfairly settled, to the great injury of the plaintiffs; that it contains many erroneous charges, and omitted to give credits to which the plaintiffs are entitled, and that Carnochan was induced to sign it, and to give the note for the amount, in consequence of his situation, which placed him in the power of the defendant. That the deeds also were executed under duress, and consequent imposition. The bill prayed that the account might be resettled, that the deeds might be cancelled, and the defendant enjoined from proceeding under them. The injunction was awarded.

The defendant, Christie, filed his answer, denying all the material allegations of the bill.

Numerous exhibits were filed, and several depositions taken. In December 1821, the parties agreed to refer the case to arbitrators, and the following submission was entered on the record :

*449]	* "Carnochan & Mitchel v. William Christie and William Jenner,	}	In equity.
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"We agree to the reference. The arbitrators to determine all matters in controversy, as exhibited in the pleadings, with the understanding, that the stated account is not to be opened further than to permit the complain-

a performance of the real agreement between the parties; the answer is viewed in the light of a cross-bill, and becomes the foundation for a proper decree by the court. This practice has been adopted, as most convenient and expedi-

tious in settling definitively the rights of the parties, and for the sake of saving further litigation and expense. *Bradford v. Union Bank*, 15 How. 69, and authorities there cited.

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ants to establish by proof, the errors in the same, as alleged in their bill and exceptions; the items which compose the alleged error of four thousand pounds, to be distinctly stated and specified by the complainants, within twenty days from this date. The defendant, William Christie (if he desire it), to have one hundred and twenty days to produce documents or vouchers to answer the said items, upon giving the complainants notice, within ten days after receiving such specification. The parties to proceed in the arbitration, upon ten days' notice, after the expiration of the time allowed the complainants to exhibit their specification above mentioned. This submission to be made an order of court. The arbitrators to make their award within one hundred and twenty days, unless prevented by the requirement of time by the said William Christie as aforesaid, from this date, and return the same to the next term of this court; which award, when so made, shall be final and conclusive between the parties, subject to those exceptions which arise upon awards or decisions of arbitrators. Claims to *commissions [450 mutually abandoned, and the amount decreed by the arbitrators to be paid in two instalments, at six and twelve months from the date of the decree, and sufficient security for the fulfilment of the award be given by Carnochan & Mitchell to William Christie. The arbitrators to have the power of examining witnesses upon oath, and calling for documents which they may deem necessary; but the said William Christie shall be excused from producing any such document, if he will depose that the same is not in his possession, on this side of the Atlantic. The arbitrator, under this submission, chosen and selected by the complainants, is William Gaston, Esq., and the arbitrator chosen and selected by the defendant, William Christie, is Samuel Nicholas, Esq.; the said arbitrators, in case of disagreement, to name an umpire. The arbitrators to decide whether William Christie is entitled to a distinct and separate interest in the Florida lands, as he alleges, or to an undivided interest in the proceeds of the same, as alleged by Carnochan & Mitchel. If they decide in favor of complainants upon this point, then the whole property shall be placed in the hands of trustees mutually appointed by the parties, with authority to sell the same, or such part thereof as may be necessary, and appropriate the proceeds to William Christie, on his own account, and to the credit of the balance, which shall be found due to him, until the same is extinguished, in the proportion of the respective interests of William Christie and Carnochan & Mitchel. If they *decide [451 in favor of the defendant upon this point, then it is agreed, that an immediate partition of the property shall be made, and the part allotted to Carnochan & Mitchel shall be placed in the hands of such trustees, and the same, or such parts as may be necessary, to be sold, and the proceeds appropriated in like manner to the payment of the balance found due to William Christie, by Carnochan & Mitchel, until the same is paid. That, as soon as that balance is paid, the deeds and other incumbrances held by said William Christie, with the settled account and note of Carnochan & Mitchel, are to be delivered up. That it shall be referred to the said arbitrators to determine whether the payment of the balance should be made in England at par, or here."

On the 14th of February 1822 the following award was returned, and filed in court.

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"In the Sixth Circuit Court of the United States, District of Georgia.

Carnochan & Mitchel	} In equity.
v.	
Christie & Jenner.	

"ARBITRATION.—The undersigned arbitrators, chosen and selected by the above-named parties, as will more fully appear by reference to the submission calling them to perform this duty, under date of the 28th of December 1821, beg leave to report and award the following result, after the *452] most patient hearing of the parties aforesaid, and a *careful examination of the books, papers, letters and vouchers which have been submitted to their inspection, and also after giving all matters and things in controversy the most mature deliberation.

"1st. That William Christie place to the credit side of his account with the late firm of Carnochan and Mitchel, the sum of \$18,546.55, as an amount paid by said Carnochan & Mitchel, through Mitchel, Nephew & Co., of Havana, to Messrs. John & James Inerarity, for sixteen shares. or 80,000 acres of land, bought by Carnochan & Mitchel, by order, and for account of, William Christie, of said John & James Inerarity, lying in the territory of West Florida ; that the said Carnochan & Mitchel be also credited with an accumulating interest on said amount from the dates of payment, which precise periods will more fully appear by reference to an affidavit made by Colin Mitchel, at Havana, on the 19th day of October 1821 ; said interest to be calculated at and after the rate of five per centum per annum ; provided, nevertheless, that the said John Carnochan and Peter Mitchel shall grant, or cause to be granted, unto the said William Christie, a clear, unincumbered and satisfactory title, to the said sixteen shares, or 80,000 acres of land lying in West Florida as aforesaid.

"2d. William Christie to place to the credit side of his account with the late firm of Carnochan * & Mitchel, the sum of 10,000*l.* sterling, or *453] \$44,444.44, being in payment to Carnochan & Mitchel for thirty shares, or 150,000 acres of land, lying in the territory as aforesaid of West Florida ; the said sum of \$44,444.44, to draw an accumulating interest to the credit of the said Carnochan & Mitchel, at and after the rate of five per centum per annum. The period when said interest shall commence to be calculated, shall be from the day of the date of the title, which title is referred to in the provision next following : provided, nevertheless, that the said John Carnochan and Peter Mitchel shall grant, or cause to be granted, unto the said William Christie, a clear, unincumbered and satisfactory title of the said thirty shares, or 150,000 acres of land, lying in the territory of West Florida as aforesaid.

"3d. William Christie to place to the credit side of his account, with the late firm of Carnochan & Mitchel, the one, half amount of the sterling cost of a case of merchandise, marked AP. (56) number fifty-six, shipped to A. H. Putnam & Co., in the year 1816, amounting to the sum of 91*l.* 8*s.* 7*d.*, as the whole cost ; one-half to be thus credited is 45*l.* 14*s.* 3½*d.*, or \$203.16, *454] without placing any interest whatever to the credit *of Carnochan & Mitchel, on this amount, no interest considered as of right accruing on this credit.

"4th. William Christie to place to the credit side of his account with the late firm of Carnochan & Mitchel, one-third of the net proceeds of

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twenty-one bales of cotton, the whole amount of net proceeds of twenty five bales of cotton, and also the whole amount of net proceeds of thirty-nine bales of cotton, with an accumulating interest from the date, when in funds from the sale of same, at and after the rate of five per centum per annum : provided, nevertheless, that the said John Carnochan & Peter Mitchel shall grant to said William Christie, the bonds of Bainbridges & Brown, of London, indemnifying the said William Christie against any future claimants whatever, for the net proceeds of said twenty-five bales of cotton ; and also, against all such unascertained charges as now exist, or may hereafter exist, against the thirty-nine bales of cotton as aforesaid.

" 5th. William Christie to place to the credit side of his account with the late firm of Carnochan & Mitchel, one-half the amount of 350*l.* sterling, paid for deeds, &c., one-half to be borne by the said William Christie, and the other half by Carnochan & Mitchel, being \$777.77, with interest at five per centum per annum as aforesaid, from the period of the debit in the books of said William Christie.

" 6th. William Christie to place to the credit *side of his account with the late firm of Carnochan & Mitchel, a discount paid by Car- [*455 nochan & Mitchel on Virginia bank-notes, received from John Gruve, on account of William Christie, amounting to \$2210, at two and a half per cent. is \$55.25, with interest, at five per centum per annum, from the date of receipt of said money.

" 7th. William Christie to place to the credit side of his account with the late firm of Carnochan and Mitchel, the sum of \$60.75, for attaching money in the hands of R. Harvey, of Augusta, with interest of five per centum per annum, from the date of such charge in the books of Carnochan & Mitchel.

" 8th. William Christie to place to the credit side of his account with the late firm of Carnochan & Mitchel, two-thirds amount of the expenses on loading the ships Ocean and Aberdeen, the whole amounting to \$243.75 ; two-thirds of which, to be credited as aforesaid, is \$162.50, with interest as aforesaid, at the rate of five per centum per annum, from the date of such charge in the books of Carnochan & Mitchel.

" 9th. Carnochan & Mitchel to place to the credit side of their account with William Christie, the sum of four pounds sterling, or \$17.70, paid by the latter to Captain Munro, with interest, as aforesaid, at the rate of five per centum per annum from the *date of such advance, as entered in [*456 the books of William Christie.

" 10th. Carnochan & Mitchel are to account to William Christie for a libranza, amounting to \$300, transmitted to Colin Mitchel, of Havana, for collection ; also for a piece of red cloth and some thread, remaining on hand unsold.

" 11th. The undersigned distinctly award and determine, that the amounts expressed in the first, second and fourth preceding items of this instrument of award, cannot be considered as sums to the credit side of William Christie's account with Carnochan & Mitchel, until all the conditions annexed to those respective items are fulfilled. The amounts expressed in items third, fifth, sixth, seventh and eight, are without any condition, and are, of course, to be immediately placed to the credit of Carnochan & Mitchel, in the account of William Christie.

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"12th. The undersigned arbitrators award, and hereby decide, that the interest of William Christie in the Florida lands, meaning thereby the 80,000 acres, and 150,000 acres, mentioned in items first and second of this instrument of award, is an undivided interest.

"13th. The undersigned arbitrators award, and hereby decide, that William Christie is entitled to debit and credit Carnochan & Mitchel, in account, at the rate of five per centum per annum interest, annually, as same *457] as heretofore, or shall hereafter become due, so that each *annual accumulation of interest shall become principal, and be considered as same.

"14th. The arbitrators feel themselves unqualified to decide upon a bill of charges exhibited by William Christie as his expenses in prosecuting this suit, together with other charges that have been incurred, incidental to the same, both in England and this country, and would beg leave, with the consent of both parties, to refer the same to his honor, the judge, to decide on whom, in this controversy, such expenses can most properly fall.

"15th. The arbitrators do hereby award and decide, that any balance that is now due, or shall be hereafter paid by Carnochan & Mitchel to William Christie, shall be considered as money due and payable in England at par. If, therefore, the sum is paid by Carnochan & Mitchel to William Christie in the United States, it must be in British sterling, at the current rate of exchange between the two countries.

16th. Whereas, William Christie has this day exhibited to the undersigned arbitrators his entire account current with the late firm of Carnochan & Mitchel, with interest calculated thereon up to the 16th instant, we have duly examined the same, and believe it to be a just and faithful account, showing an amount of 30,483*l.* 1*s.* 2*d.*, or \$135,480.25, due him from Carnochan & Mitchel, and which sum we do hereby award unto the said *458] William Christie as the basis upon which a final settlement of accounts shall take place between him and the said Carnochan & Mitchel. It is to be distinctly understood by both parties in this controversy, that this amount of (30,483*l.* 1*s.* 2*d.* sterling, or) \$135,480.25, as now awarded to William Christie, is subject to all such deductions as are mentioned in the preceding items of this instrument of award; namely, the unconditional items to be immediately deducted; the conditional items to be deducted as the provisions of those conditions shall be removed by Carnochan & Mitchel, as will more fully appear is intended by the arbitrators, by reference to the eleventh item of this instrument of award: provided, nevertheless, that such amounts as are awarded to the credit of Carnochan & Mitchel in the preceding items of this instrument of award, as are hereby credited in the account current, as aforesaid, of William Christie, shall be considered always as settled, by being placed in said account to the credit of Carnochan & Mitchel, and, of course, cannot be deducted again, as might be inferred, without this explanation, under the name of a proviso to this item the sixteenth.

"17th. This item the arbitrators beg leave to introduce as explanatory, rather than having any specific award or decision thereon, affecting the *459] *parties in controversy, by observing, that the actual amount that it may be desirable to ascertain may be due from Carnochan & Mitchel to William Christie, at any future day, arising from the account now referred to of William Christie, and also the deductions to be made from the

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same, growing out of this instrument of award, may be known, by ascertaining whether Carnochan & Mitchel have removed the conditions annexed to items first, second and fourth; and, if found to be removed, then the whole amount now awarded in their favor (under conditions) will be placed to their credit in the account of William Christie; which, on supposition of being removed and placed at their credit at this period of time, would leave a balance due from Carnochan & Mitchel to William Christie, of a sum within the amount of \$70,000.

(Signed,)

SAM. NICHOLAS,
WM. GASTON."

"Savannah, February 13th, 1822."

Exceptions were taken to this award; and on the 23d of December 1822, an interlocutory decree was pronounced by the circuit court, affirming the award, and referring the cause to the register, "to report the precise amount due the defendant, absolutely, according to the principles established by the award; also, the amount due hypothetically, should the complainants fail to fulfil the conditions imposed by the award; in which undertaking he shall be at liberty to invoke the aid of the arbitrators, or either of them. *He must also report to the court the titles proposed to be given by the complainants to the defendant [*460 Christie, for the several purchases of the Florida lands, should any difficulty arise between the parties on the legal sufficiency of the titles." The court also directed the parties to join in a transfer of the Florida lands to trustees, for the purpose of raising the money due under the award, when instructed to do so under order of the court.

The report of the register was made, showing the sum due according to the award, should a title be made to Christie for the Florida lands he had purchased; and also the sum which would be due, should no such deeds be made. At the same term, on the return of this report, a final decree was pronounced, affirming the award, and affirming also the register's report; and directing the parties to join in a transfer of their whole interest in the Florida lands to trustees, "in trust to hold the same in pursuance of the said submission, and the award made thereon." The injunction was dissolved, and the bill dismissed.

The plaintiffs appealed from this decree, and contend, that the award ought to be set aside, because, 1st. The arbitrators have not decided the whole matter that was submitted to them. 2d. They have decided and awarded what was not submitted. 3. The award is uncertain.

*1. In support of the exception founded on the failure of the arbitrators to decide on the whole matter submitted to them, it is alleged by [*461 the plaintiffs, that the duress under which the deeds of trust, executed in England, were obtained constituted a very essential part of the controversy, on which the award is entirely silent. It is undoubtedly true, that this is a "matter in controversy, as exhibited in the pleadings," and would be submitted to the arbitrators by the general words of the first sentence, describing the extent of the submission, if it were not withdrawn from them in a subsequent part of the same instrument. But we think it is withdrawn. After directing that the arbitrators shall ascertain the balance due on the account, the agreement of submission adds, "that as soon as that balance is paid, the

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deeds and other incumbrances held by the said William Christie, with the settled account and note of Carnochan & Mitchel, are to be delivered up." This is, we think, a waiver of any objection to the manner in which those deeds were obtained, and an admission that they should remain in the hands of Christie, as a security for the debt, until it should be discharged.

The second omission with which this award is charged, is the failure to decide on the claim of the plaintiffs to a credit for Christie's proportion of the expenses incurred in the settlement of the Florida lands. This, too, was undoubtedly a matter of controversy. But we think it has been decided. The *arbitrators have allowed to the plaintiffs several credits *462] claimed by them, but have not expressed their rejection of any item which may have been made and disallowed. Instead of introducing into the award the several items which may have been claimed and disallowed, they award a specific sum to the defendant, with a declaration that the several items enumerated in the preceding part of the award as credits to which the plaintiffs are entitled, are to be deducted therefrom. This is, we think, a rejection of all credits not enumerated.

The failure to decide on the allegation made in the bill, and denied in the answer, that 50,000 acres, part of the interest in the Florida land sold to the defendant, was a mere donation, made under expectations which were entirely disappointed. This also is, we think, decided in the award. The 2d article directs a credit of 10,000*l.* sterling to be given to Carnochan & Mitchel, being in payment to them for thirty shares, or 150,000 acres of land, lying in the territory of West Florida. This, we think, asserted the title of the said Christie to the whole quantity of land, and negatives the right of the plaintiffs to reclaim any part of it.

2. The second objection to the award is, that the arbitrators have exceeded their power, in requiring the plaintiffs to give a clear unincumbered title to the Florida lands. The plaintiffs are not required to give a title. This is not a substantive and independent part *of the award, direct- *463] ing them to do a particular act, for the neglect of which they would be liable to damages, or for the enforcing of which an attachment might issue. This part of the award is not compulsory. If the plaintiffs choose to waive the credit for the purchase-money, they are left at liberty to do so, and to withhold the title, in which case the award affords the defendant no coercive means to compel a conveyance. But had this article of the award been peremptory, it is by no means clear, that the arbitrators would have exceeded their power in making it. That power extends to all matters in controversy, as exhibited in the pleadings, unless it be restrained by other parts of the submission. The title which the defendant might rightfully demand was one of these matters. The plaintiffs contend in their bill, that the defendant was perfectly acquainted with the state of the title, and was bound to take it, such as it was; and there are strong circumstances to support their pretensions, at least, so far as respects the 80,000 acres purchased from the Ineralties. The defendant insists that they were bound to make him a clear title, and relies to prove this on a memorandum at the foot of a stated account, in these words:

"Memorandum.—From the balance due to me on this account as *per contra*, there is to be deducted, as agreed on between Messrs. Carnochan & Mitchel and myself, in lieu of 150,000 acres, or 30 shares of their purchase

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of Apalachicola lands, held in trust for them by Mr. Colin *Mitchel, on his and their executing to me a proper title for the same, the sum of 10,000 pounds." The memorandum proceeds in like manner to state, that on a title for the 80,000 acres, there shall be deducted the sum of 6583*l.* 8*s.* 6*d.*

The question, what was a proper title, was for a court to decide, under all the circumstances of the contract, and was transferred to the arbitrators by the submission, unless it be withdrawn from them by a subsequent clause of that instrument. The plaintiffs contend, that it is withdrawn by the provision, that, if the arbitrators should decide that Christie was entitled to an undivided interest of the proceeds of the Florida lands, then the whole property shall be placed in the hands of trustees, "with authority to sell the same, or such part thereof as may be necessary, and appropriate the proceeds to William Christie, on his own account, and to the credit of the balance which shall be found due to him, until the same is extinguished in the proportion of the respective interests of William Christie and of Carnochan & Mitchel." The 12th article of the award decides, that the interest of William Christie in the Florida lands, is an undivided interest. The plaintiffs insist, that the parties have themselves provided for the state of things produced by this decision. They have directed that all the lands shall be placed in the hands of trustees, to be sold by them, so far as may be necessary for the payment of the debt due to Christie. They have agreed on what *shall be done if the [465] lands were held in common, and that on which they have agreed is inconsistent with what the arbitrators have done. There is, undoubtedly, some confusion on this part of the submission, which renders the construction difficult. It directs, that the interest of Christie, as well as that of Carnochan & Mitchel, shall be sold, and the proceeds applied to the individual credit of Christie, and to the credit of Canrochan & Mitchel, on their debt to Christie, in proportion to their respective interests in the land. This may be readily done, should the lands be sufficient to discharge the debt. Should they be insufficient, and should the insufficiency arise from want of title in Carnochan & Mitchel, Christie gives the credit absolutely, although he had contended that the right of the plaintiffs to the credit depended on the validity of the title they sold. This consideration may enter into the construction of the submission, if the words be doubtful, but cannot control the arrangement of the parties, if that be intelligible. We rather incline to the opinion, that as the whole property, including the interest of Christie, was to be placed in the hands of trustees, to be sold on joint account, that the conveyance of a title to Christie could not be contemplated as a preliminary measure. But it is unnecessary to give any positive opinion on this point, because, we think, the award must be set aside because it is uncertain, and not final in a very material point.

3. The arbitrators have determined that Carnochan & Mitchel *are [466] entitled to a credit of \$63,290.99, on account of the sales of lands to Christie, provided they "shall grant, or cause to be granted, to the said William Christie, a clear, unincumbered and satisfactory title" to the said lands. No time is limited by which this title shall be made. The question, then, whether this credit is to be allowed, or disallowed, is left indefinitely open. Consequently, the award is not final. It does not settle the accounts between the parties. If it be said, that the court may prescribe some time by which the title shall be made, the answer is, that if the arbitrators could

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refer that question to the court, they have not done so. They have left it entirely open. But the award ought itself to settle finally and conclusively the whole matter referred to them. It is contrary to the principle of a general reference, that the court should take the award so far as it goes, and supply all omission by its decree. The award ought to be in itself a complete adjustment of the controversies submitted to the arbitrators.

This award, therefore, ought to be set aside, and the decree affirming it reversed, and the cause remanded to the circuit court. The case will, then, stand before that court as it did previous to the submission. The court may dissolve the injunction, so far as it should be perfectly satisfied that the plaintiffs are indebted to the defendant; and Christie may either avail himself *of the deeds he has received, or file a cross-bill praying the aid *467] of the court.

DECREE.—This cause came on, &c.: On consideration whereof, this court is of opinion, that there is error in the decree of the circuit court in affirming the award made by the arbitrators in this cause, which said award ought to have been set aside, because the same is not certain and final: It is, therefore, decreed and ordered, that the said decree be reversed and annulled, and that the cause be remanded to the circuit court, with directions to set aside the said award, and to take such further proceedings in the said cause as may be equitable and just.

UNITED STATES v. ORTEGA.

Foreign minister.

An indictment under the crimes act of 1790, c. 36, § 37, for infracting the law of nations, by offering violence to the person of a foreign minister, is not a case "affecting ambassadors, other public ministers and consuls," within the 2d section of the 3d article of the constitution of the United States.

The circuit courts have jurisdiction of such an offence, under the 11th section of the judiciary act of 1789, c. 20.

Quære? Whether the jurisdiction of the supreme court is not only original, but exclusive of the circuit court, in "cases affecting ambassadors, other public ministers and consuls," within the true construction of the 2d section of the 3d article of the constitution?

CERTIFICATE of Division from the Circuit Court for the Eastern District of Pennsylvania.

*March 16th, 1826. WASHINGTON, Justice, delivered the opinion *468] of the court.—The defendant, Juan Gualberto de Ortega, was indicted in the circuit court of the United States for the eastern district of Pennsylvania, for infracting the law of nations, by offering violence to the person of Hilario de Rivas y Salmon, the charge d'affaires of his Catholic Majesty, the King of Spain, in the United States, contrary to the law of nations, and to the act of the congress of the United States in such case provided.¹ The jury having found a verdict of guilty, the defendant moved in arrest of judgment, and assigned for cause, "that the circuit court has not jurisdiction of the matter charged in the indictment, inasmuch as it is a case affecting an ambassador or other public minister." The opinions of the judges of that

¹ See 4 W. C. C. 531.