be regarded as the clerk's own act, independent of the order of the county court; it appearing, that he refused to do the act, until the order was made. But be it so. Had the clerk authority to alter the record of his certificate of the acknowledgment of the deed, at any time after the record was made? We are of opinion, he had not. We are of opinion, he acted ministerially, and not judicially, in the matter. Until his certificate of the acknowledgment of Elliott and wife was recorded, it was, in its nature, but an act *in pais*, and alterable at the pleasure of the officer. But the authority of the clerk to make and record a certificate of the acknowledgment of the deed, was *functus officio*, as soon as the record was made. By the exertion of his authority, the authority itself became exhausted. The act had become matter of record, fixed, permanent and unalterable; and the remaining powers and duty of the clerk were only to keep and preserve the record safely.

If a clerk may, after a deed, together with the acknowledgment *or probate thereof have been committed to record, under color of amendment, add anything to the record of the acknowledgment, we [*342 can see no just reason why he may not also substract from it. The doctrine that a clerk may, at any time, without limitation, alter the record of the acknowledgment of a deed, made in his office, would be, in practice, of very dangerous consequence to the land titles of the county, and cannot receive the sanction of this court.

It is the opinion of this court, that there is no error in the judgment and proceedings of the circuit court, and the same are affirmed, with costs.

Judgment affirmed.

---

*Lessee of THOMAS SPRATT, ANDREW, WILLIAM, SARAH, JACOB, CATHARINE and PIERCE SPRATT, Plaintiffs in error, *v.* SARAH SPRATT, Defendant in error. [*343

Power of aliens to hold lands.

The act of the legislature of Maryland, passed 19th December 1791, entitled "an act concerning the territory of Columbia, and the city of Washington," which, by the 6th section, provides for the holding of lands by "foreigners," is an enabling act; and applies to those only who could not take lands without the provisions of that law. It enables a "foreigner" to take, in the same manner as if he were a citizen.[1] p. 349.

A foreigner who becomes a citizen, is no longer a foreigner, within the purview of the act. Thus, after-purchased lands vest in him as a citizen; not by virtue of the act of the legislature of Maryland, but because of his acquiring the rights of citizenship. p. 348.

Land in the county of Washington, and district of Columbia, purchased by a foreigner, before naturalization, was held by him, under the law of Maryland, and might be transmitted to the relations of the purchaser, who were foreigners; and the capacity so to transmit those lands, is given absolutely, by this act, and is not affected by his becoming a citizen; but passes to his heirs and relations, precisely as if he had remained a foreigner.[2] p. 349.

ERROR to the Circuit Court of the District of Columbia, for the county of Washington. This was an action of ejectment, brought by the plaintiff

---

[1] Matthew *v.* Rae, 3 Cr. C. C. 699.

[2] But the act only extends to lands acquired by deed or will, and therefore, if an alien purchased lands, and before the execution of a deed, died, or became a citizen by naturalization, such lands did not descend to his alien heirs. Spratt *v.* Spratt, 4 Pet. 393.

in error, to recover several messuages, which he claimed by virtue of several demises made to him by Thomas Spratt and others (the messuages all lying and being in the county of Washington, in the district of Columbia), against Sarah Spratt, the defendant in error, who was the widow of James Spratt, and who was in possession of the premises.

The following facts were agreed in the court below: That James Spratt, before the time of the demise laid in the plaintiff's declaration, died seised, in fee-simple, of the premises mentioned in the said declaration; that the lessors of the plaintiff were the legitimate brothers and sisters, of the whole blood, of the said James Spratt; and that the defendant was the lawful wife of said James Spratt, at the time of his death, and, as his widow, was still living.(*a*) Also, that the lessors of the plaintiff made a peaceable entry into the said premises, and executed to the plaintiff the lease men-
*344] tioned in the said *declaration, upon the premises, and that the plaintiff, being in possession of said premises, by virtue of that lease, was therefrom ousted by the defendant. That the said James Spratt, and the defendant, his wife, were natives of Ireland, of the United Kingdom of Great Britain and Ireland, and came to the United States of America in the year 1812, and before the 18th day of June, in that year; and continued to reside therein, and to cohabit as man and wife, to the time of his death; which took place on the 4th day of March 1824. That the said James Spratt, on the 11th day of October, in the year 1821, was duly admitted and naturalized as a citizen of the United States, in the circuit court of the district of Columbia, and received a certificate of such naturalization in due form, according to the directions and conditions of the several acts of congress in such case provided; the said defendant then and there being his lawful wife, and as such cohabiting with him as aforesaid. That the defendant, Sarah Spratt, did not, in her own person, comply with any of the directions or conditions required by the said acts of congress, or any of them, or become in any manner admitted or naturalized as a citizen of the United States, otherwise than by the admission and naturalization of her said husband. That the lessors of the plaintiff were all natives of Ireland, and native-born subjects of the king of the United Kingdom of Great Britain and Ireland; that only two of them, to wit, Thomas Spratt and Pierce Spratt, ever came to the United States; both of whom came to the United States, and resided therein, some years before the death of James Spratt, and that none of them were admitted or naturalized citizens of the United States. That James Spratt was not in any manner seised of, or entitled to, any of the messuages or tenements in the declaration mentioned, at any time before his said naturalization, except of the lot No. ———, in square ———, which was duly bargained, sold and conveyed by one Isaac S. Middleton, to the said James Spratt, in fee-simple, on the 11th day of January 1821; and that all the rest and residue of the said messuages and tenements were purchased by the said James Spratt, and to him duly bargained, sold and conveyed, in fee-simple, at various times in the year 1822 and 1823, after his said naturalization.

(*a*) The act of assembly of Maryland, No. 1786, ch. 45, entitled "an act to direct descents," provides, "if there be no descendants or kindred of the intestate to take the estate, then the same shall go to the husband or wife, as the case may be."

Upon this statement of facts, the question of law which arose was, as to the true construction of a statute of the state of Maryland, entitled "an act concerning the territory of Columbia, and the city of Washington," passed the 19th of December 1791, by the 6th section of it is provided as follows, to wit: "That any foreigner may, by deed or will to be hereafter made, take and hold lands within that part of the *said territory which lies within this state, in the same manner as if he was a citizen of this [*345 state; and the same lands may be conveyed by him, and transmitted to, and be inherited by, his heirs or relations, as if he and they were citizens of this state: provided, that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen."

It was contended, on the part of the plaintiff, that according to the true construction of that statute, his lessors, who were the heirs and relations of the deceased, James Spratt, inherited all the lands and tenements of which he died seised in fee; and that the circumstance of James Spratt, who was a foreigner, having been naturalized before his death, could not alter the state of their right of inheritance, whether the lands were acquired before or after his act of naturalization.

Coxe, for the plaintiff in error.—The term "foreigner," used in the law of Maryland, is not a technical word, nor has it received a technical definition; and in this respect, it differs from "alien." Its true signification must, therefore, be ascertained by its use, and by a reference to the statute by which it is introduced. It is probably derived from the Latin, *foris*, and *origo*, the Spanish *foranio*, or the French, *forain;* and always refers to birth or origin. Alien is obtained from the Latin, *alienus*, and always refers to the present time. One may cease to be an alien, but can never cease to be a foreigner. In this sense, it is employed in various acts of congress, in the most precise and formal writings, and in ordinary parlance. This is the proper mode of ascertaining its meaning. 6 Bac. Abr. 382, Stat. 3; Acts of Congress, April 10th, 1806 (2 U. S. Stat. 374); Act of 1793 (1 Ibid. 300); August 2d, 1813 (3 Ibid. 72); 23d December 1814 (Ibid. 159). It has also another signification, equally distinct from *alien*. Ministers from abroad are called "foreign ministers," in the act of congress relative to their compensation. The foreign trade and commerce of the United States, are, in such terms, the subject of legislation. When applied to persons, it is the correlative of *native*. Naturalized *foreigner* is also in use.

The policy of the act was to encourage persons from abroad to purchase and settle in the district, and an opposite construction of the act, from that claimed by the plaintiff, would be in opposition to the purposes of the statute. The right of every one from abroad, to purchase and transmit "to his heirs or relations," the real estate he may acquire, is conferred by positive statute; it is absolute and vested, and not to be taken away by implication and inference. As to the *construction of statutes: 6 Bac. Abr. 6, 380, 386, 388, 389. [*346

In reply to Messrs. Key and Jones, Mr. *Coxe* argued: In regard to the etymology, *alien* is derived directly from the Latin *alienus*, and has in common parlance the same signification—foreigner is a modern word, derived, either mediately or directly, from *fores* and *origo;* whenever properly used, it refers to the origin, and not to any present relation. One of the authori-

ties cited, employs the expression, "a foreigner who has been naturalized, and has become a denizen." It would be a solecism in language, to use the phrase "an alien who has been naturalized;" to be equalled only by the language employed in one of the Maryland statutes which has been referred to, which in express terms, calls foreigners who have been naturalized, "natural-born subjects."

It is admitted, as a general rule, that the naturalization refers back, and confirms a title previously acquired; but that is only when necessary to give validity to it. It can never relate back, so as to preclude the party from appealing to the statute, as conferring upon him, originally, a valid title. The conclusion which has been pressed, that the construction contended for would give to alien heirs, privileges superior to those of natural-born heirs, can derive no support from the law. They are only relieved from the disabilities incident to their alienage. A remote alien heir is not preferred to a nearer native heir.

It has been contended, that inasmuch as the party, by his naturalization, lost his privilege of inheriting from them, the disability should be reciprocal; such, however, is not the legal effect of becoming a citizen. An individual becoming naturalized under our laws, thereby loses no privilege of a foreign subject; he acquires privileges, but loses none formerly possessed. The law of Maryland merely preserves and legalizes inheritable blood, between a citizen and a foreigner; and enables the child or heir, not naturalized, to inherit as if he were. The construction contended for, makes it immaterial when the party became a citizen.

The policy of the two acts of the legislature, and the naturalization laws, are harmonious and consistent. That of the latter is to induce aliens to become citizens, that of the former is, to induce foreigners to purchase and reside in the district. The laws for naturalization ought not to be so construed, as, by remote inference, to involve as a consequence, the abrogation and annihilation of privileges, vested in the latter as the proprietor of the land. It is immaterial, whether the privilege be considered as one
*347] *annexed to the person, or attached to the land; the person can only have it as the proprietor of the land, and the land can only have it as being so held.

Key and *Jones*, for the defendant in error.—1st. The construction contended for cannot be given to the Maryland statute: and 2d, if it could, it does not affect the case.

1. There is no real distinction between the term "foreigner" and "alien." Their derivation is from words of the same import, and they are used synonymously, by writers of all descriptions. The rule of construction stated on the other side, is a correct one, viz., looking at other laws *in pari materia*, and seeing how the term in controversy is understood in them. This rule has been applied on the other side, by looking to the laws of the congress of the United States, where the words "alien" is generally used as opposed to "citizen." But this does not aid us in endeavoring to understand what the Maryland legislature meant by the expression. For this purpose, we must look to laws passed by the same legislature. Look, then, to the Maryland laws of naturalization. These are evidently meant only to apply to such persons, as the counsel for the appellant con-

tends, are properly called "aliens." Such persons as are not citizens, but are to be made so. Yet the word used in all these laws, is the same word we find in the statute we are now considering, it is "foreigner."

We come at the meaning of the expression, by considering the object of the law. It is to enable foreigners to take and hold and transmit lands, who were under disability to do so. Who were they? not "foreigners," as understood on the other side; who, though born in a foreign country, might have become citizens here, and be under no disability; but "foreigners," as understood by the legislature, who had not become citizens, and who were under the disibility. In the section in controversy, the word is used in plain opposition to "citizen." The persons it intended to provide for, are to take as if they were "citizens." By this construction of the word, the law is made to operate in cases where its operation is necessary. The contrary construction makes it operate where its operation is unnecessary.

2. What has this law to do with the case? James Spratt becomes naturalized, becomes to all intents and purposes an American citizen. He purchases lands; how is he entitled to hold them? By virtue of his citizenship. In the case before the court, it is true, he purchased one of the lots in question, before his naturalization; but it is well settled, that his naturalization relates back and protects his title. It is contended, he takes the land, not as a citizen, which he is, but as a foreigner, which he is not. That is, a law made for a man *who could not take without the law, is to give right to him who had it without the law. A citizen shall not [*348 take as a citizen, but under a law made for foreigners. If he could take by either (and that is all that can be asked), yet must he not be held to take by the higher and better right?—by the privilege acquired by his citizenship, as the heir-at-law takes by descent, where he is devisee? It is said, this is taking away a privilege from him; what privilege? it is said, that of transmitting to his alien heirs; that by the Maryland laws, he had the right of holding lands and so transmitting them; and that it is taking away this right, to make him take as a citizen. But it is plain, that if he takes and transmits the land, as a foreigner, under the Maryland law, notwithstanding his naturalization, that he must then transmit it to his foreign heirs, to the exclusion of his own children, born here. This must be the case, according to all decisions upon the subject, for a citizen cannot inherit to a foreigner, nor a foreigner to a citizen. If he holds as a foreigner; foreigners, by this Maryland law, will inherit. Citizens, though his own children, can by no law inherit, if he holds as a foreigner. Here, then, would be the case of a citizen; and his own children, though citizens, are not to inherit to him. Can a citizen hold, in any other way than as a citizen? If he is a citizen, how can he take, why should he take, as a foreigner? only for the sake of these foreign relations; surely, not for his own. They show this Maryland law, and want him to take by that, though he choose to take by citizenship. They show a law, saying a man may take and transmit as a foreigner; but he may also choose to take by a better right, by citizenship; and he becomes naturalized. They ought to show a law, saying he must take and transmit as a foreigner.

Marshall, Ch. J., delivered the opinion of the court.—This is an ejectment, brought in the circuit court for the district of Columbia, sitting in

the county of Washington, for the recovery of several lots, lying in the county of Washington, of which James Spratt died seised. The lessors of the plaintiff are aliens, the legitimate brothers and sisters of the said James; and the defendant, who is also an alien, is his widow; James died without issue.

James Spratt came into America in the year 1812, and became a citizen, on the 11th of October, in the year 1821. He purchased one of the lots, before he became a citizen, and the others afterwards. The title to the lots in controversy depends on the construction of an act of the state of Maryland, passed the 19th of December 1791, entitled "an act concerning the
*349] *territory of Columbia, and the city of Washington." The 6th section provides, "that any foreigner may, by deed or will, to be hereafter made, take and hold lands, within that part of the said territory which lies within this state, in the same manner as if he was a citizen of this state; and the same lands may be conveyed by him, and transmitted to, and be inherited by his heirs or relations, as if he and they were citizens of this state; provided, that no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen." The facts were stated in a case agreed, which was substituted for a special verdict. The circuit court gave judgment for the defendant, to which the plaintiff has sued out a writ of error.

The plaintiffs contend, that the word "foreigner," as used in the act, designates a person born in a foreign country, and that such person does not cease to be a foreigner, by becoming a citizen of the United States. The words of the act, therefore, apply to him, although he becomes a citizen, and enable him to take and transmit lands to his alien heirs or relations. The court is not of this opinion. The act is an enabling one, and applies to those only who could not take without it. It enables a *foreigner* to take "in the same manner as if he was a citizen." This language is entirely inapplicable to a *citizen*. An act to enable a citizen to take lands "as if he were a citizen," would be an absurdity too obvious to escape the notice of the legislature. We think, then, that a foreigner who becomes a citizen is no longer a foreigner, within the view of the act. His after-purchased lands vest in him as a citizen, not by virtue of the act of the legislature of Maryland.

The lot which he purchased while an alien, stands on different principles. This lot was acquired by a foreigner, under the act which was passed for the purpose of enabling him to acquire it. He took and held it under the law, and could transmit it as prescribed by the law. The act, after enabling him to take, adds, "and the same lands may be conveyed by him, and transmitted to, and be inherited by, his heirs or relations, as if he and they were citizens of this state." The capacity to transmit given by the act extends, in terms, to all lands acquired under the act. The lands taken, "may be conveyed by him," that is, by the taker, "and transmitted to his heirs or relations. This power of transmission is not restricted to his character as a foreigner, but belongs to him, as a person taking lands under the act. The power of transmitting is connected with the power of taking, and is co-extensive with it. This power is within the words of the law; and the words which confer it are not inoperative, since they give a capacity which citizenship does not give—the capacity of transmitting to relations.

who are *foreigners. This capacity is given, absolutely, by the act; and is not, we think, affected, by his becoming a citizen.

The objection urged by the defendant to this construction, is, that it would perpetuate the title in aliens to the remotest times, because it attaches the privilege to the land, and not to the person. We do not think the construction exposed to this objection. The land passes to the heirs or relations of the said James Spratt, precisely as it would have passed, had he remained a foreigner. The capacity is not in the land, but in the person, in relation to that land. It was in him, when the land was purchased, and did not pass out of him, under the words of the law, by his becoming a citizen.

It is the opinion of the majority of the court, that the circuit court erred, in deciding that judgment ought to be rendered for the defendant. It ought to be reversed, and the cause remanded to the circuit court, with directions to enter judgment for the plaintiff for the lot which was acquired by the said James Spratt, while an alien, saving the widow's dower; and that his declaration be dismissed as to the residue.

This cause came on, &c.: On consideration whereof, it is the opinion of this court, that the said circuit court erred, in deciding that judgment ought to be rendered for the defendant, and that the same ought to be reversed. Therefore, it is ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be and the same is hereby reversed, and that the cause be remanded to the said circuit court, with directions to enter judgment for the plaintiff for lot No. — which was acquired by the said James Spratt, while an alien, saving the widow's dower; and that his declaration be dismissed as to the residue.

---

*Montgomery Bell, Plaintiff in error, *v.* James Morrison, Anthony Butler and Jonathan Taylor, Defendants in error. [*351

Depositions de bene esse.—Statute of limitations.—Acknowledgment by partner after dissolution.

The authority given by the act of congress of 24th September 1789, ch. 20, to take depositions of witnesses, in the absence of the opposite party, is in derogation of the rules of the common law, and has always been construed strictly; and therefore, it is necessary to establish, that all the requisites of the law have been complied with, before such testimony is admissible.[1] p. 355.

The certificate of the magistrate taking the deposition, is good evidence of the facts stated therein, so as to entitle the deposition to be read to the jury, if all the necessary facts are there sufficiently disclosed. p. 356

It should plainly appear, from the certificate of the magistrate, that all the requisites of the statute have been fully complied with; and no presumption will be admitted, to supply any defects in the taking the deposition.[2] p. 356.

The statute of limitations of Kentucky, is substantially the same with the statute of 21 James I.,

---

[1] United States *v.* Smith, 4 Day 126; Jones *v.* Neale, Mart. (N. C.) 81; Carrington *v.* Stimson, 1 Curt. 437; Evans *v.* Hettich, 3 W. C. C. 409; Bleecker *v.* Bond, Id. 529; Merrill *v.* Dawson, Hempst. 563; Thorpe *v.* Simmons, 2 Cr. C. C. 195; The Merritt Hunt, Newb. 4. And see Harris *v.* Wall, 7 How. 693; as to the rules for taking a deposition *de bene esse*.

[2] The omission of the magistrate to certify that he reduced the testimony to writing himself, or that it was done by the witness in his presence, is fatal to the deposition. Cook *v.* Burnley, 11 Wall. 639.