of bills, with the cash received for the tobacco; and a purchase against which Armor was not without a warning, furnished by the letters which Fiske, his own witness, swears he submitted to Armor, prior to the negotiation. It was creating new funds for a purchase, not purchasing with the funds already created, or in the hands of Fiske.

Judgment reversed.

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*Bank of the Commonwealth of Kentucky *v.* Wistar, Price & Wistar. [*431

Amendment of judgment.—Damages.

Where the clerk of the court had omitted to enter the judgment of this court, allowing to the defendant in error, on the affirmance of the judgment of the circuit court, interest at the rate of six per centum per annum, as damages, and the mandate of this court, although issued, had not been presented to the circuit court; the court ordered the judgment to be reformed, allowing interest at the rate of six per cent.: The omission is a mere clerical error.

It is a rule of this court, that where there are no special circumstances, six per cent. interest is allowed upon the amount of the judgment, in the court below; under special circumstances, damages to the amount of ten per cent. are allowed. p. 423.

Vinton moved to amend the judgment of this court, rendered in this cause, at the January term of 1829 (2 Pet. 318), by giving to the defendants in error, damages on the judgment, at the rate of six per centum per annum, and that the judgment of the court be so reformed. He stated, that the mandate, though issued, had never been presented to the circuit court, and it was now in this court. Under these circumstances, and as the omission was a mere clerical error, he hoped the motion would prevail.

Bibb, for the plaintiffs in error, objected to the amendment being made, as the whole subject was *res adjudicata* at the last term; and was not now to be opened. The mandate is a solemn act of the court; it passes under the view of the court, and is the proceeding of the court. The omission it is asked to correct, was not a clerical misprison. If, in the course of adjudication in this court, an act of congress should not have been adverted to, would the court, at a subsequent term, open their judgment, to correct the error which existed from their disregard of the act? The rules of court are not of higher sanction; and if in the issuing of the mandate, that rule which allows interest has not been applied, the court will not go back to reform what has *passed into judgment. Such a proceeding would [*432
expose the court and suitors to great inconvenience, and be productive of frequent injustice.

Marshall, Ch. J., delivered the opinion of the court.—In the case of the motion to amend the mandate, the court directs the amendment to be made, and the judgment of the court to be reformed, allowing interest at the rate of six per cent. The reason is, that by a rule of this court, when there are no special circumstances, six per cent. interest is allowed upon the amount of the judgment in the court below; under special circumstances damages to the amount of ten per cent. are awarded by the court. The omission is deemed by this court a mere clerical error.

On consideration of the motion made by Mr. *Vinton*, of counsel for the defendants in error, in this cause, on a prior day of this term, to amend the

judgment of this court rendered in this cause, at the January term of this court, in the year of our Lord 1829, to wit, on the 14th day of February of the said last-mentioned year, by giving to the defendants in error in said cause on said judgment damages at the rate of six per centum per annum: It is ordered and adjudged by this court, that the said judgment of this court, of February 14th, A. D. 1829, be reformed, by the amendment of damages, at the rate of six per centum per annum so that the judgment read thus: "It is adjudged and ordered by this court, that the judgment of the said circuit court in this case be and the same is hereby affirmed, with costs and damages at the rate of six per centum per annum.

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*433] *William Parsons, Plaintiff in error, *v.* Bedford, Breedlove & Robeson, Defendants.

Practice in Louisiana.—Trial by jury.—Construction of statutes.

This action was instituted in the district court of the United States for the eastern district of Louisiana, according to the forms and proceedings adopted and practised in the courts of that state; the cause was tried by a special jury, and a verdict was rendered for the plaintiff: on the trial, the counsel for the defendant moved the court to direct the clerk of the court to take down in writing, the testimony of the witnesses examined in the cause, that the same might appear on record; such being the practice of the state courts of Louisiana; and which practice the counsel for the defendant insisted, was to prevail in the courts of the United States, according to the act of congress of the 26th of May 1824, which provides, that the mode of proceeding in civil causes, in the courts of the United States established in Louisiana, shall be conformable to the laws directing the practice in the district court of the state, subject to such alterations as the judges of the courts of the United States should establish by rules. The court refused to make the order, or to permit the testimony to be put down in writing; the judge expressing the opinion, that the courts of the United States are not governed by the practice of the courts of the state of Louisiana; the defendant moved for a new trial, and the motion being overruled, and judgment entered for the plaintiff on the verdict, the defendant brought a writ of error to this court.

Under the laws of Louisiana, on the trial of a cause before a jury, if either party desires it, the verbal evidence is to be taken down in writing, by the clerk, to be sent to the supreme court, to serve as a statement of facts, in case of appeal; and the written evidence produced on the trial is to be filed with the proceedings; this is done, to enable the appellate court to exercise the power of granting a new trial, and of revising the judgment of the inferior court: *Held*, that the refusal of the judge of the district court of the United States to permit the evidence to be put in writing, could not be assigned for error in this court, the cause having been tried in the court below, and a verdict given on the facts, by a jury; if the same had been put in writing, and been sent up to this court with the record, this court, proceeding under the constitution of the United States, and of the amendment thereto, which declares, "no fact once tried by a jury shall be otherwise re-examinable in any court of the United States, than according to the rules of the common law," is not competent to redress any error, by granting a new trial.[1]

The proviso in the act of congress of the 26th of May 1824, ch. 181, demonstrates that it was not the intention of congress, to give an absolute and imperative force to the state modes of proceeding in civil causes, in Louisiana, in the courts of the United States; for it authorizes the judge to modify them, so as to adapt them to the organization of his own courts; and it further demonstrates, that no absolute repeal was intended of the antecedent modes of proceed-

*434] ing authorized in the United States courts, under former acts of congress; for it *leaves the judge at liberty to make rules, by which discrepancy between the state laws and the laws of the United States may be avoided. p. 444.

The act of congress having made the practice of the state courts the rule for the courts of the

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[1] See Railroad Co. *v.* Fraloff, 100 U. S. 31.