*absence of all contrary proof, that the last instrument embodied the real intent of the parties; that the preliminary agreement either imperfectly expressed their intent, or was designedly modified in the final act. The general rule of law is, that all preliminary negotiations and agreements are to be deemed merged in the final, settled instruments executed by the parties, unless a clear mistake be established. In this very case, it may be true, for aught that appears, that the president might have insisted upon the introduction into the trust deed of the very words in controversy, to the use of the United States for ever, in order to avoid the ambiguity of the words of the preliminary agreement. He may have required an unlimited conveyance to the United States; so that they might be unfettered in any future arrangements for the promotion of the health, the comfort, or the prosperity of the city. But it is sufficient for us, that here there is a solemn conveyance, which purports to grant an unlimited fee in the streets and squares, to the use of the United States; and we know of no authority, which would justify us in disregarding the terms, or limiting their import, where no mistake is set up and none is established. It would, indeed, be almost incredible, that any substantive mistake should have existed, and never have been brought to the notice of the trustees, or to that of the commissioners, upon their succeeding to the trust; or seriously insisted on by any party, down to the time of filing the present bill. The present is not a bill to reform a contract or deed; but to assert rights supposed to grow out of the trusts declared in the deed.

This view of the matter renders it unnecessary for the court to go into an examination of the facts insisted upon in the answer, to repel the allegations in the bill, or to disprove the equity, which it asserts. If the United States possess, as we think they do, an unqualified fee in the streets and squares, that defeats the title of the plaintiffs, and definitively disposes of the merits of the cause.

It is the opinion of the court, Mr. Justice BALDWIN dissenting, that the decree of the circuit court, dismissing the bill, be affirmed with costs.

Decree affirmed.

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*FRANCIS LAGRANGE *alias* ISIDORE, a man of color, Plaintiff in error, *v.* PIERRE CHOUTEAU, Jun. [*287

Record.

After the decision of the case in the supreme court of the state of Missouri, the plaintiff presented a petition for a rehearing, claiming his freedom, under the provisions of the ordinance of congress of the 13th of July 1787, for the government of the territory of the United States north-west of the river Ohio; the supreme court refused to grant the rehearing; and the plaintiff prosecuted a writ of error to this court, under the 25th section of the judiciary act of 1789: *Held*, that as the petition for rehearing formed no part of the record, it could not be noticed; the jurisdiction of this court depends on the matter disclosed in the bill of exceptions.

ERROR to the Supreme Court of the State of Missouri. An action of trespass *vi et armis* was brought in the state circuit court of the county of St. Louis, state of Missouri, by the plaintiff in error, a man of color, against Pierre Chouteau, the defendant, for the purpose of trying his right to free-

dom. The judgment of the circuit court was against the plaintiff; and on an appeal to the supreme court of Missouri, that judgment was affirmed.

The case was brought before this court by writ of error to the supreme court of Missouri, under the 25th section of the act to establish judicial courts of the United States, passed on the 29th of September 1789. The case is fully stated in the opinion of the court.

Kane, for the defendant in error, objected to the court taking jurisdiction of the case, as it did not come within the provisions of the 25th section of the act of congress. It could not be found, on the most careful examination of the record, that the construction of any act of congress had been brought into question in the courts of Missouri, where the suit was originally entertained. All the questions in the case before those courts might have been, and were, decided, without reference to the act of congress. The claim to freedom, asserted by the plaintiff, was left to the jury, by the court before which it was tried; and if, in any of the instructions *given by the court, reference to the ordinance of congress of the 13th of July 1787, can be supposed to have been made, the construction given by the court to that ordinance was in favor of the plaintiff in error.

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Lawless, for the plaintiff in error, argued, that as the provisions of the 25th section do not declare in what stage of the proceedings, the construction of an act of congress shall have been questioned, to give this court jurisdiction; the refusal of the supreme court of Missouri to allow to the plaintiff a rehearing, he having petitioned for the same, alleging his right to freedom under the ordinance, made this a case for the cognisance of this court. *Hickie* v. *Starke*, 1 Pet. 94.

Marshall, Ch. J., delivered the opinion of the court.—This was an action of trespass *vi et armis*, brought by the plaintiff against the defendant, in the circuit court for the county of St. Louis, in the state of Missouri, for the purpose of trying the right of the plaintiff to freedom. The general issue was pleaded, and a verdict found for the defendant. The judgment on this verdict was carried by appeal to the supreme court for the third judicial district, where it was affirmed. This judgment has been brought into this court by writ of error.

The pleadings do not show that any act of congress was drawn into question; but the counsel for the plaintiff has read a petition for a rehearing, which sets forth a claim to freedom, under the ordinance of congress, passed on the 13th of July 1787, for the fiovernment of the territory of the United States north-west of the river Ohio.[1] But as a petition for rehearing forms no part of the record, it cannot be noticed. The jurisdiction of the court depends on the matter disclosed in the bill of exceptions.

At the trial, the plaintiff proved, that Pascal Carre, in 1816, was desirous of selling the plaintiff, who was then his slave, and the defendant wished to purchase him. The offer of the defendant was declined, because the witness

[1] The ordinance of 1787 was superseded by the adoption of the constitution; such of its provisions as are yet in force, owe their validity to subsequent federal or state legislation. Strader *v.* Graham, 10 How. 82; Vaughan *v.* Williams, 3 McLean 530; Woodman *v.* Kilbourn Manufacturing Co., 1 Abb. U. S. 158.

was *desirous of selling the slave to some person who would take him out of St. Louis. Some time afterwards, he sold the slave to Pierre Menard, a resident of Kaskaskias, in the state of Illinois, for the sum of $500.

Pierre Menard deposed, that some time in the year 1816, Pascal Carre offered to sell the plaintiff to him; which proposition was rejected, because he resided in Illinois, where slavery was not tolerated. On understanding that the defendant was desirous of purchasing a slave, the witness informed him, that Mr. Carre had one for sale; but the defendant replied, that Carre would not sell the slave to him, because he resided in St. Louis. It was suggested by Mr. Berthold, that the witness might purchase the slave for Mr. Chouteau; which witness declined doing, because it would be treating his friend Carre incorrectly. He, however, ultimately agreed to buy the said slave for Mr. Chouteau, take him down the river, and keep him there some months, and then deliver him to the defendant. He accordingly bought the slave, took him to St. Genevieve, in Missouri, and put him to work at mine La Motte, with some other hands. Some time afterwards, he was sent to Kaskaskias, and put on board a keel-boat as a hand. After remaining there about two days, he went in the boat to New Orleans, whence he returned to Kaskaskias about the 30th of March 1817, as a hand in the boat. After remaining a few days, for the purpose of unlading the boat, he was sent in her to the Big Swamp, in Girardeau county, state of Missouri, where he remained five or six weeks; after which he returned in the boat to Kaskaskias, from which place, after two or three days, he was sent to St. Louis, and delivered to the defendant, who returned to the witness the $500 he had advanced for him. The witness stated, that he purchased the said slave for the defendant, and not for himself, and that he never intended to make Kaskaskias the place of his (the slave's) residence. Some other testimony, substantially proving the same fact, was introduced by the parties. Upon this testimony, the plaintiff's counsel moved the court to instruct the jury:

1. That if they shall be of opinion, that the plaintiff remained in the state of Illinois, with the person who purchased *him, and who was a resident of the said state, they must find for the plaintiff. This [*290 instruction was refused.

2. That the right of the plaintiff to his freedom is not affected by any secret trust or understanding between the person who purchased and brought him to Illinois and any other person whatsoever. This also was refused.

3. That if the jury shall be of opinion, that the plaintiff was, during any time, lawfully a resident of the state of Illinois, and in the service of a citizen of that state, claiming property in, and owner of, the said plaintiff, they shall find for the plaintiff. This instruction was given.

4. That if the jury shall be of opinion, that the plaintiff was sold absolutely, by a citizen of the state of Missouri, to a citizen of the state of Illinois, and belonged, under such sale, to such purchaser; no secret understanding between said purchaser and a third person shall affect the rights which the plaintiff may otherwise have to his liberty, as a consequence of his residence in the state of Illinois. The court refused to give this instruction as asked; but did instruct the jury, that if they believed the plaintiff was bought by Colonel Menard, for his own use, and taken to Illinois, and kept there, with the intention to make that his permanent place of residence, they ought to find for the plaintiff. The counsel for the

plaintiff excepted to the opinions given by the court, and to its refusal to give those which were asked.

The right of the plaintiff to liberty was supposed by the court to depend on the question of his being purchased, in fact, by a citizen of Illinois, and on his being carried to Illinois, with a view to a residence in that state. The facts were left to the jury, and found for the defendant. It is not perceived that any act of congress has been misconstrued. The court is, therefore, of opinion, that it has no jurisdiction of the case.

The writ of error is dismissed; and the cause remanded to the supreme court for the third judicial district of Missouri, that the judgment may be affirmed.

Writ of error dismissed.

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*291] *John Conard, Marshal of the Eastern District of Pennsylvania, Plaintiff in error, *v.* Francis H. Nicoll, Defendant in error.

Priority of the United States.

The principles decided in the case of Conard *v.* Atlantic Insurance Company, 1 Pet. 386, relative to the priority of the United States, examined and confirmed.

Error to the Circuit Court for the Eastern District of Pennsylvania. The defendant in error brought an action of trespass in the court below, against the plaintiff in error, for a quantity of merchandise, consisting of teas, cassia, nankeens, &c., all of the value of $193,725. Also, for four ships, viz., the Addison, the Woodrop Sims, the Thomas Scattergood, and the Benjamin Rush, all of the value of $100,000.

The defendant below pleaded, that he, as marshal of the district of Pennsylvania, had a writ of *fieri facias* against one Edward Thomson, in favor of the United States, and that he seized the merchandise and ships as Thomson's property. The plaintiff replied, property in himself, &c., in the common form. It was agreed between the parties to the suit, that the title of Francis H. Nicoll to the property should be tried, the property having been placed in the hands of trustees to abide the event of the suit.

The case was tried in the circuit court, before Mr. Justice Washington, and a verdict was given for the plaintiff for $39,249.66 damages. The defendant in the circuit court excepted to the charge of the court, and prosecuted this writ of error. The whole charge delivered to the jury in the circuit court, was brought up by the writ of error.

By direction of the court, the whole of the charge delivered by Mr. Justice Washington in the circuit court is inserted, as follows:

*292] *This is an action of trespass brought against the marshal of this district, for levying an execution, at the suit of the United States, against Edward Thomson, on the ships Addison, Woodrop Sims, Benjamin Rush, and Thomas Scattergood, and certain parts of their cargoes, alleged to have been the property of the plaintiff. The defendant justifies his proceedings under the allegation that the property levied upon belonged to Edward Thomson, against whom the execution was sued out.

The evidence given by the plaintiff to prove his title to the property in dispute, is substantially as follows: 1. A *respondentia* bond in the usual