proceedings on the second note; which were conducted with less diligence than those on the first.

Having thus disposed of the first error assigned by the plaintiff, it remains to consider the second; which is, that the circuit court erred in rejecting the evidence offered of Miller's notorious insolvency at the time the note became due. If the court are correct in overruling the exception taken to the charge of the circuit court, we cannot reverse their judgment for overruling this evidence. It did not conduce to prove any fact material to the issue between the parties; which was, not whether Miller was in fact insolvent; but whether the plaintiff had, by due diligence, ascertained his insolvency, by legal process, commenced in time, diligently conducted till its final consummation, and by the exhaustion of all incidental and collateral remedies afforded by the law, without obtaining the debt. The proof, or the admission of actual insolvency, would in no wise relieve the plaintiffs from the duty imposed on them; it would not accelerate their right to sue the defendant, nor enlarge his obligation to pay, which did not arise by the mere insolvency of the maker of the note, but by its legal ascertainment in the manner prescribed by the judicial law of Kentucky. That law has been
*391] recognised by this court in the case of *Weisiger*, as *applicable to cases of this description. To decide now, that the plaintiffs could avail themselves of the insolvency of the maker, unaccompanied with the diligent use of all legal remedies; and in a case where we are of opinion, that the plaintiffs have not made use of the diligence which, under the circumstances of this case, it was incumbent on them to use, would be to disregard all the principles of Kentucky jurisprudence, as evidenced by the received opinion, general practice, and judicial decisions of that state. We think it is not an open question, whether these principles shall be respected by this court; and cannot feel authorized to depart from them, in a case to which their application cannot be questioned. The judgment of the circuit court is, therefore, affirmed with costs.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the seventh circuit and district of Kentucky, and was argued by counsel: On consideration whereof, 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 affirmed, with costs.

392] *Oliver Saunders, Plaintiff in error, *v.* Benjamin Gould.

Practice.

Where the whole cause, and not a point or points in the cause, has been adjourned from the circuit court to this court, the case will be remanded to the circuit court.

The case was admitted to be essentially the same with that of Gardner *v.* Collins, 2 Pet. 58; but the counsel for the plaintiff relied on evidence adduced to show a settled judicial construction of the act of the legislature of Rhode Island, relative to descents, different from that which had been made in this court: "The court is not convinced that the construction of the act which prevails in Rhode Island is opposed to that which was made by this court."

This case came before the court on a Certificate of a Division of opinion by the judges of the Circuit Court for the district of Rhode Island. It was

submitted, without argument, by *Coxe*, for the plaintiff in error; and *Whipple*, for the defendant.

Marshall, Ch. J., stated—When this case was brought before the court, it was admitted by the counsel to be essentially the same with *Gardner* v. *Collins*, reported in 2 Pet. 58; but he relied on certain evidence which he exhibited, of a settled judicial construction of the act on which the cause depended, different from that which had been made by this court. Had the court been satisfied on this point, that settled construction would undoubtedly have been respected. But the court was not convinced that the construction which prevails in Rhode Island is opposed to that which was made by this court. On communicating this decision to the bar, counsel declined arguing the cause; and a certificate, similar to that which was given in the former case, was about to be prepared; but on inspecting the record, it was perceived, that the judges of the circuit court, instead of dividing on one or more points, had divided on the whole cause; and had directed the whole case to be certified to this court. Considering this as irregular, the court directs the cause to be remanded to the circuit court; that further proceedings may be had therein according to law.

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*Sarah Spratt, Administratix of James Spratt, Appellant, *v.* Thomas Spratt, Respondent. [*393

Naturalization.—Descent to alien heirs.

The second section of the act of congress "to establish an uniform system of naturalization," passed in 1802, requires that every person desirous of being naturalized, shall make report of himself to the clerk of the district court of the district where he shall arrive, or some other court of record in the United States; which report is to be recorded, and a certificate of the same given to such alien; and "which certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of the act, on his application to be naturalized, as evidence of the time of his arrival within the United States:" James Spratt arrived in the United States, after the passing of this act, and was under the obligation to report himself according to its provisions. The law does not require that the report shall have been made five years before the application for naturalization, the third condition of the first section of the law, which declares that the court admitting an alien to become a citizen "shall be satisfied that he has resided five years in the United States," &c., does not prescribe the evidence which shall be satisfactory; the report is required by the law to be exhibited on the application for naturalization, as evidence of the time of the arrival in the United States; the law does not say the report shall be the sole evidence; nor does it require that the alien shall report himself within any limited time after arrival; five years may intervene between the time of arrival and the report, and yet the report be valid; the report is undoubtedly conclusive evidence of the arrival; but it is not made by the law the only evidence of that fact. p. 406.

James Spratt was admitted a citizen of the United States, by the circuit court for the county of Washington, in the district of Columbia, and obtained a certificate of the same, in the usual form. The act of the court admitting James Spratt as a citizen, was a judgment of the circuit court; and this court cannot look behind it, and inquire on what testimony it was pronounced. p. 406.

The various acts on the subject of naturalization, submit the decision upon the right of aliens to courts of record; they are to receive testimony, to compare it with the law, and to judge on both law and fact; if their judgment be entered on record in legal form, it closes all inquiry and like any other judgment, is complete evidence of its own validity.[1] p. 408.

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[1] The Ocean, 2 Abb. U. S. 434; Ritchie v. Putnam, 13 Wend. 524; Banks v. Walker, 3 Barb. Ch. 438; McCarthy v. Marsh, 5 N. Y. 263; Commonwealth v. Leary, 1 Brewst. 27.