house: but they agreed with the rest of THE COURT, in deeming the service, under the present circumstances, to be sufficient, in strictness of construction, as well as upon principle.

The service of the *subpœna* being thus proved, the complainant was entitled to proceed *ex parte;* and accordingly, moved for and obtained commissions, to take the examination of witnesses in several of the states.

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*342] *CLERKE, Plaintiff in error, *v.* HARWOOD.

Practice.—Mandate.—Costs.

If the judgment of the highest state court be reversed, and that of the subordinate state court affirmed, the mandate goes to the subordinate court;[1] and the costs of both courts will be allowed.

THIS was a Writ of Error to the High Court of Appeals of the state of Maryland, to remove the proceedings in a cause, involving a construction of the treaty of peace between the United States and Great Britain, which that court had decided against the title claimed under the treaty, by reversing and annulling a previous judgment given in the general court of the state, in favor of the claim. The only objection arising on the record, was—whether a paper money payment of a British debt into the treasury of Maryland, during the war, by virtue of a law of the state, was a bar to the creditor's recovery at this time? And the solemn adjudication in *Ware* v. *Hylton* (*ante*, p. 199), having settled that point, *Dallas*, for the defendant in error, submitted the case, without argument, to the court, who, in general terms, reversed the judgment of the high court of appeals, and affirmed the judgment of the general court.

*343] *It then became a question, to which of the state courts the mandate should be sent, and what costs should be allowed.

E. & W. Tilghman, for the plaintiff in error, contended, that the judgment of the court of appeals being reversed, it was to be regarded as if it had never existed; and that, therefore, the mandate must issue to the general court, whose judgment was to be carried into effect. They insisted also, that the costs in both the courts of Maryland, and in this court, should be allowed.

Dallas, on the other side, stated that by the 25th section of the judicial act, the writ of error was to have the same effect in this case, as if the judgment or decree complained of, had been rendered or passed in a circuit court,

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Upon the whole, the defendants in error pray that the decree of the circuit court may be affirmed, with costs and damages for the delay, to wit, the lawful interest of the state of Rhode Island, being six *per centum per annum*, on the balance in the hands of the marshal of the said district, and also on the sum of $800, awarded as damages by the said circuit court, to be computed from the 25th of June 1796, the date of the said decree.

ASHER ROBBINS, } Of counsel with
PETER S. DU PONCEAU. } the defendants.

Philadelphia. 6th February 1796.

[1] Gelston *v.* Hoyt, 3 Wheat. 335.

and that the proceeding upon the reversal was also to be the same, except that after once being remanded, this court may proceed to a final decision, and award execution. In the case, then, of a reversal of a judgment of the circuit court, the 24th section of the judicial act provides, that on reversals in the supreme court, they shall proceed to render such judgment, or pass such decree, as the inferior court should have done; and shall send a special mandate to the circuit court to award execution thereupon. If, therefore, the decree of a circuit, reversing the decree of a district, court, were reversed, the mandate would be sent to the former, and not to the latter, and by a parity of reasoning, in the present instance, the writ should be sent to the court of appeals, and not to the general court. The construction seems to be strengthened by that part of the 25th section, which contemplates, that the cause might be remanded to the state court more than once—as, it is not probable, that the court whose judgment is affirmed, would require a second order; and it is surely proper, that the court, whose judgment is reversed, should be apprised of the event. As to costs, *Dallas* contended, that at least the costs of the court whose judgment was in favor of the defendant in error, ought not to be charged against him. But—

By the Court.—The judgment of the superior court of Maryland being reversed, it has become a mere nullity; and costs must follow the right as decided here.

Let the judgment of the general court be affirmed; let the costs in the courts of Maryland, and in this court, be allowed to the plaintiff in error; and let the mandate for execution issue to the general court.

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*Brown *v.* Van Bramm. [*344

Practice.—Discontinuance.—Damages.

The entry of a default, after a plea of the general issue, no *similiter* being on the record, does not operate as a discontinuance, in Rhode Island.

In Rhode Island, the court may assess damages, in an action on a foreign bill, payable in sterling money.

Interest, on affirmance, is to be calculated on the aggregate amount of principal and interest in the court below, to the time of affirmance, but no further.[1]

Error from the Circuit Court for the district of Rhode Island. The case was as follows: On the 10th of March 1792, Brown & Francis, merchants, of Providence, in Rhode Island, drew four sets of bills of exchange on Thomas Dickason & Co., merchants, of London, payable at 365 days' sight, to Benjamin Page, or order, for the aggregate sum of 3000*l.* sterling. Page, being at Canton, on the 28th of March 1793, indorsed these bills to Van Braam, the defendant in error, and on the same day, as the agent of Brown & Francis, drew another set of bills of exchange, upon Thomas Dickason & Co., payable also at 365 days sight, to Van Braam, or order, for 3000*l.* sterling. On the 9th of April 1793, Page, in the same character of agent, drew a similar set of bills, in favor of Van Braam, or order, for 400*l* sterling. One bill of each set was presented to Thomas Dickason & Co., in London, for acceptance, on the 31st of December 1793, but were then pro-

[1] See Mitchell *v.* Harmony, 13 How. 116; Perkins *v.* Fourniquet, 14 Id. 328.