*FEBRUARY TERM, 1799.

On the opening of the Court, a commission, dated the 20th of December 1798, was read, appointing Bushrod Washington, one of the associate judges of the supreme court of the United States, and he was qualified according to law. (*a*)

Dewhurst *v.* Coulthard.

Jurisdiction.—Case stated.

The supreme court will not take cognisance of a case brought before it by a case stated.[1]

The following statement of a case was presented by *E. Tilghman* to the court, at the instance of the attorneys for both the parties in the suit, in the circuit court of the New York district, with a request, that it might be considered and decided.

"This was an action commenced by Isaac Coulthard against John Dewhurst, in the supreme court of the state of New York, and was removed by petition to the circuit court of the United States for the New York district, agreeable to the act of congress in such case made and provided, by the defendant, he being a citizen of the state of Pennsylvania.

"The plaintiff's action is prosecuted against the above defendant, as the, indorser of a foreign bill of exchange, drawn by G. B. Ewart, of the city and state of New York, on Thomas Barnes, of Baldork, near London, dated the 10th day of January 1792. On the part of the defendant, it is admitted, that at the time of the making and indorsing said bill, the said John Dewhurst was a citizen of, and resident in, the city and state of New York, *and that he duly received notice of the protest of the said bill for non-acceptance and non-payment. That on or about the 25th day of [*410 May 1792, the defendant removed to the city of Philadelphia, in the state of Pennsylvania, where he has resided since that period. That shortly after his removal to Philadelphia, viz., on or about the 7th day of June 1792, a commission of bankruptcy was awarded and issued forth against him, in pursuance of two certain acts or statutes of the said state of Pennsylvania, the one entitled 'An act for the regulation of bankruptcy;' the other entitled, 'An act to amend an act entitled, an act for the regulation of bankruptcy:' And in pursuance of which said statutes, the defendant did actually deliver, assign and transfer to the commissioners appointed under the said commission, the whole of his effects, as well in the state of Pennsylvania, as elsewhere, which consisted principally of credits due to the said defendant,

(*a*) The appointment of Mr. Washington was in the room of Mr. Justice Wilson, deceased. Mr. Justice Chase was prevented by indisposition from attending the court, during the whole of the present term.

[1] Keene *v.* Whitaker, 13 Pet. 459. The appellate jurisdiction of the supreme court can only be exercised in conformity with the regulations prescribed by congress. Wiscart *v.* D'Auchy, *ante*, p. 321; The Perseverance, *ante*, p. 336; The Charles Carter, 4 Dall. 22; United States *v.* Hooe, 1 Cr. 318; Sarchet *v.* United States, 12 Pet. 143; Minor *v.* Tillotson, 2 How. 392; Kelsey *v.* Forsyth, 21 Id. 85.

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in the state of New York. It is further admitted, that the said John Dewhurst in all things complied with the said statutes of bankruptcy before referred to, and that on the 11th of August 1792, he obtained a certificate of bankruptcy duly executed.

"Upon the above state of the case, it is submitted to the supreme court of the United States, to determine whether the certificate issued under the laws of Pennsylvania, operates as a discharge of the said debt, notwithstanding its being contracted in another state, where there was no bankrupt law, and while the defendant was resident in the said state of New York. If the court should be of opinion that it does, it is agreed that judgment be entered for the defendant; otherwise, for the plaintiff, for $1120 damages, and six cents costs."

The Court, on the ensuing morning, returned the state of the case, declaring, that they could not take cognisance of any suit or controversy, which was not brought before them, by the regular process of the law.

Motion refused.

Ex parte Hallowell.

Attorneys.

An attorney of the supreme court may be transferred to the roll of counsellors.

Mr. Hallowell had been admitted, originally, as an attorney of this court; but now *Lewis* moved, that his *name should be taken from the roll of attorneys, and placed on the list of counsellors.

*411]

The Court directed the transfer to be made; and Mr. Hallowell was qualified, *de novo*, as counsellor.

Fowler *et al. v.* Lindsey *et al.*

Fowler *et al. v.* Miller.

Certiorari.—States as parties.

A *certiorari* does not lie to remove a canse, on account of the absence of jurisdiction in the court in which it is pending.

The fact that the land which is the subject of controversy was granted by, and is claimed under, a state, does not make the state a party to the suit; nor does an issue, whether it be within the limits of a state.[1]

A rule had been originally obtained in these actions (which were depending in the circuit court for the district of Connecticut), at the instance of the defendants, requiring the plaintiff to show cause why a *venire* should not be awarded to summon a jury from some district, other than that of Connecticut or New York; but it was changed, by consent, into a rule to show cause why the actions should not be removed by *certiorari* into the supreme court as exclusively belonging to that jurisdiction.

On showing cause, it appeared, that suits, in the nature of ejectments had been instituted in the circuit court for the district of Connecticut, to re-

[1] And see United States Bank *v.* Planters' Bank, 9 Wheat. 904; Bank of Kentucky *v.* Wister, 2 Pet. 318.