party be permitted to escape the penalties of the law, by suppressing it, and producing a correct copy from the register?

The second bill of exceptions goes to the exclusion of the *copy deed, for want of a substantial compliance with the rule of court. If this court mean to express the opinion, that the rule was substantially complied with, it is one of those mere matters of opinion, which are not to be argued down. Certainly, the defect already mentioned is imputable to the affidavit that was tendered; and there was no want of time to have made it conform to the rule. But if it be insisted, that the court transcended its powers in making such a rule, then, may the practice of the state and United States courts from time immemorial, and the actual existing practice of the courts of the states at this day, as well as the reason of the thing, be urged in its vindication; and if it be objected, that the case was one in which the court below might have relaxed its rule; then it may be fairly asked, how is it possible for one mind to dictate to another on such a subject? It is an exercise of discretion, which can be limited and directed by no fixed rule. [*247

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Georgia, and was argued by counsel: On consideration whereof, it is considered and ordered by this court, that the circuit court erred in refusing to allow the exemplification of the grant to Basil Jones, mentioned in the record, to be read in evidence as in the exceptions of the plaintiff is mentioned. Whereupon, 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 reversed, and that this cause be and the same is hereby remanded to the said circuit court, with instructions to award a *venire facias de novo*.[1]

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*Lessee of John Fisher, Plaintiff in error, *v.* William Cockerell, Defendant in error. [*248

Constitutional law.—Error to state court.—Record.

After a judgment for the plaintiff in ejectment, in the Union county circuit court of the state of Kentucky, an *habere facias possessionem* was awarded, and on the succeeding day, on motion of the defendant, commissioners were appointed by the court, according to the provisions of the occupying claimants' law of Kentucky, to assess the damages and waste committed by the defendant, and the value of the improvements made on the land; the commissioners valued the improvements at $1350; F. did not appear on the return of the inquisition, and judgment was rendered against him for the sum so reported; afterwards, F. tendered a bill of exceptions stating that "he moved the court to quash the report of the commissioners appointed to value the improvements, assess the damages, &c., but the court refused to quash the same," to which opinion he excepted, and appealed to the court of appeals; a citation was issued by the clerk of the court of appeals, which was served; in that court, among others, F. assigned, as error, "the plaintiff deriving his title from Virginia, the act or acts of the state of Kentucky, on which the court has founded its opinion, is repugnant to the compact with Virginia, therefore, void as to the case before the court, being against the constitution of the United States."

To bring a case within the protection of the seventh article in the compact between Virginia and Kentucky, it must be shown, that the title to the land asserted is derived from the laws of Virginia, prior to the separation of the two states.

The clerk of the Union county circuit court certified, that certain documents were read in evidence,

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[1] For a further decision, see 9 Pet. 663.

and among them, a patent under which F. claimed, issued by the governor of Kentucky, founded on rights derived from the laws of Virginia. This court cannot notice such patent; it cannot be considered a part of the record.[1]

In cases at common law, the course of the court has been uniform, not to consider any paper as part of the record, which is not made so by the pleadings, or by some opinion of the court referring to it; this rule is common to all courts exercising appellate jurisdiction, according to the course of the common law; the appellate court cannot know what evidence was given to the jury, unless it is spread on the record in proper legal manner; the unauthorized certificate of the clerk, that any document was read, or any evidence given to the jury, cannot make that document, or that evidence, a part of the record, so as to bring it to the cognisance of this court. The court cannot perceive from the record in the ejectment cause, that the plaintiff in error claimed under a title derived from the laws of Virginia; it, therefore, cannot judicially know, that this suit was not a contest between two citizens claiming entirely under the laws of the state of Kentucky. When the record of the Union county circuit court was transferred to the court of appeals, the course of that court requires, that the appellant or the plaintiff in error shall assign the errors on which he means to rely; the assignment in that court contains the first intimation that the title was derived from Virginia, and that the plaintiff in error relied *249] on *the compact between those states; but this assignment does not introduce the error into the record, nor in any matter alter it. The court of appeals was not confined to the inquiry, whether the error assigned was valid in point of law; the preliminary inquiry was, whether it existed in the record; if upon examining the record, that court could not discover that the plaintiff had asserted any right or interest in land derived from the laws of Virginia; the question whether the occupying claimants' law had violated the compact between the states, could not arise.

In the view which has been taken of the record by the court, it does not show that the compact with Virginia was involved in the case; consequently, the question whether the act for the benefit of occupying claimants was valid, does not appear to have arisen; and nothing is shown on the record, which can give jurisdiction to this court.

A review of the cases of Harris *v.* Dennie, 3 Pet. 292; Craig *v.* State of Missouri, 4 Ibid. 410; Owing *v.* Norwood, 5 Cranch 344; Miller *v.* Nicholls, 4 Wheat. 312.

In the argument, the court has been admonished of the jealousy with which the states of the Union view the revising power intrusted by the constitution and laws of the United States, to this tribunal; to observations of this character, the answer uniformly given has been, that the course of the judicial department is marked out by law; we must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it will never, we trust, shrink from the exercise of that which is conferred upon it.

Error to the Court of Appeals of the state of Kentucky, to review a decision of that court, affirming a judgment of the Union county circuit court of that state, involving the validity of a law of the state of Kentucky, called the special occupying claimant law.

The action of ejectment was commenced in the circuit court of Union county, on the 20th of May 1822. At September term 1822, William Cockerell, the defendant, appeared, and at his instance, as well as of the plaintiff, an order of survey was passed, requiring the surveyor to lay off the land in controversy, as either party should require. The plaintiff in the ejectment, after the filing of his declaration, at September term 1822, had leave to withdraw the title papers filed by him, for the purpose of the survey, as was presumed. At June term 1823, a verdict and judgment was rendered for the plaintiff, on the demise of John Fisher, the plaintiff in error. On the other counts in the declaration, which stated other demises, a verdict and judgment was entered for the defendant. *The record *250] specified the written evidence in the cause as follows:

"The following patent was the only paper read in evidence in this

[1] S. P. Reed *v.* Marsh, 13 Pet. 153.

cause. The following deeds, to wit, John Fisher to Frederick Ridgeley, and Frederick Ridgeley and wife to James Morrison, were filed among the papers, but rejected by the court, and so marked by the court, to wit:" (The patent and deeds so referred to, were then set out in the transcript.) The patent purported to have been issued in the usual form, under the seal of the Commonwealth of Kentucky, and the hand of the governor, duly countersigned by the secretary of state, on the 15th of June 1802; and "that by virtue and in consideration of three military warrants, Nos. 1115, 1125 and 1153, and entered the 21st of July 1784, there is granted by the said commonwealth unto John Fisher (*habendum*, to him and his heirs for ever), a certain tract or parcel of land, containing 600 acres, by survey bearing date the 23d of May 1785, lying and being in the district set apart for the officers and soldiers of the Virginia continental line on the Ohio," &c. The metes and bounds of the granted lands were then specially set out in the patent. The two deeds referred to having been rejected as evidence, for some reason not stated, but to be inferred, from the informality of their authentication, and in consequence the issue on the two counts which those documents were adduced to support, having been found for the defendant, it is unnecessary to state their contents. The recovery was upon the title of the original patentee, John Fisher, alone.

The court then proceeded, on the motion of defendant, to appoint commissioners (in virtue and execution of the state law) "to go on the land from which the defendant has been evicted in this action, and make assessment of what damage and waste the defendant has committed since the 20th of May 1822 (when the suit was commenced), and the rent and profit accruing since the 17th of June 1822 (the day of appearance to the action), and the value of improvements made on said land, and of the value of said land at the time of such assessment, regarding it as if such improvement had never been made." The report of the commissioners was returned to March *term 1824, in which they say, "that there has been no injury or waste done upon the premises by the occupant, since the 20th of June 1823; and they assess the improvements made on the premises as follows:" [*251

Clearing and inclosing forty-six acres of land, at twenty dollars per acre,	920
Dwelling-house and various farm buildings,	430
	$1350

For this sum, the court gave judgment against the plaintiff; who moved to quash the said report, and tendered a bill of exceptions to the refusal of the court so to quash.

Upon this last judgment, the plaintiff sued out a writ of error to the court of appeals of Kentucky, and made a special assignment of the errors complained of, pursuant to the law and practice of that court. The error assigned was, "the plaintiff deriving title from Virginia, the act or acts of the state of Kentucky on which this court has founded its opinion, is repugnant as to the compact with Virginia; therefore, void as to the case before the court, being against the constitution of the United States." The court of appeals affirmed the judgment of the circuit court of Union county, and the plaintiff prosecuted this writ of error.

Wickliffe, for the defendant in error, moved to dismiss the writ of error, for want of jurisdiction in this court. He contended, that the case presented by the record did not give the court jurisdiction under the 25th section of the judiciary act of 1789. It is a writ of error to a state court, and there is nothing on the face of the proceedings, to show that the construction of an act of congress, or the obligation of a contract, was brought into question in that court. The record does not show the particular point decided by the state court; and this court cannot look at the reasoning of that court in giving its decision, to ascertain the same. The jurisdiction must be determined by the record. *Inglee* v. *Coolidge*, 2 Wheat. 363. It is denied, that the title papers are, by the law of Kentucky, required to be recorded, in an action at law. This requisition is confined to proceedings in chancery.

*252] *The question in the state court was, whether a law of Kentucky of 1820 or 1823, was in force? The act of 1820 was repealed, before this suit was brought, and no judgment of the state court was given, whether the act of 1820 was void or not. 1 Bibb 442; 2 Ibid. 236, 292, 331; 3 T. B. Monr. 202, 128; 3 A. K. Marsh. 431.

Jones, for the plaintiff in error.—The patent shows the title of the plaintiff was derived from the state of Virginia, and the patent is properly on the record. It is the duty of the clerk, and is so made by law, to record all the title papers introduced in evidence; and under this requisition of the law, the patent is made part of the record. As to jurisdiction: *Craig* v. *State of Missouri*, 4 Pet. 426. The title of the plaintiff being shown by the patent to rest on a patent from Virginia, his rights to protection under the compact are manifest; and he is entitled to the benefit of the decision of this court. *Green* v. *Biddle*, 8 Wheat. 1.

Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment of the court of appeals of Kentucky, affirming a judgment of the Union county circuit court of that state.

The plaintiff brought an ejectment in the Union county circuit court, against the defendant, and in June term 1823, obtained judgment; on which a writ of *habere facias possessionem* was awarded. On the succeeding day, it was ordered, on the motion of the defendant, "that Josiah Williams and others be and they are hereby appointed commissioners, who, or any five of whom, being first sworn, do, on the second Saturday in July next, go on the lands from which the said defendant has been evicted in that action, and make assessment of what damage and waste the said defendant has committed since the 20th of May 1822, and the rent and profit accruing since the 17th of June 1823, and of the value of improvements made on said land, at the time of such assessment, regarding it as if such improvements had not been made; all which they shall separately and distinctly specify, and report to the next term of this court, until which time this motion is continued."

*253] *The report of the commissioners was made to the September term following, and was continued. On the 15th of March 1824, it was, on the motion of the defendant, ordered to be recorded. The improvements were valued at $1350. John Fisher, the plaintiff in the ejectment, and defendant on this motion, did not appear; and judgment was rendered against him for the sum reported to be due for improvements. Afterwards,

to wit, on the 20th of the same month, the said Fisher appeared and tendered the following bill of exceptions, which was signed: "Be it remembered, that in this cause, the defendant moved the court to quash the report of the commissioners appointed to value the improvements, assess the damages, &c.; but the court refused to quash the same, to which opinion of the court the defendant excepts," &c. The said Fisher then appealed to court of appeals. A citation was issued by the clerk of the court of appeals, which was served. Among the errors assigned by the plaintiff in error, was the following: "The plaintiff deriving title from Virginia, the act or acts of the state of Kentucky on which this court has founded its opinion, is repugnant as to the compact with Virginia; therefore, void as to the case before the court, being against the constitution of the United States." The cause was argued in the court of appeals, in June 1827, and the judgment of the circuit court was affirmed. That judgment is now brought before this court by a writ of error.

The seventh article of the compact between Virginia and Kentucky is in these words: "That all private rights and interests of lands within the said district, derived from the laws of Virginia, prior to such separation, shall remain valid and secure, under the laws of the proposed state, and shall be determined by the laws now existing in this state." This is the article, the violation of which is alleged by the plaintiff in error. To bring this case within the protection, he must show that the title he asserts is derived from the laws of Virginia, prior to the separation of the two states. If the title be not so derived, the compact does not extend to it; and the plaintiff alleges no other error. The judgment in the ejectment is rendered on a general verdict, and the title of the plaintiff is not made a part of the *record, by a bill of exceptions, or in any other manner. The clerk certifies that certain documents were read in evidence on the trial, [*254 and among these is the patent under which the plaintiff claimed. This patent was issued by the governor of Kentucky, and is founded on rights derived from the laws of Virginia. Can the court notice it? Can it be considered as part of the record?

In cases at common law, the course of the court has been uniform, not to consider any paper as part of the record, which is not made so by the pleadings, or by some opinion of the court referring to it. This rule is common to all courts exercising appellate jurisdiction, according to the course of the common law. The appellate court cannot know what evidence was given to the jury, unless it be spread on the record, in proper legal manner. The unauthorized certificate of the clerk, that any document was read, or any evidence given, to the jury, cannot make that document, or that evidence, a part of the record, so as to bring it to the cognisance of this court. We cannot perceive, then, from the record in the ejectment cause, that the plaintiff in error claimed under a title derived from the laws of Virginia.

The order made after the rendition of the judgment directing commissioners to go on the land from which the defendants had been evicted, and value the improvements, contains no allusion to the title under which the land was recovered. The plaintiff in error might have resisted this order, by showing that his title was derived from the laws of Virginia, and thus have spread his patent on the record. He has not done so. On moving to

quash the report of the commissioners, a fair occasion was again presented, for making his patent the foundation of his motion, and thus exhibiting a title derived from the laws of Virginia. He has not availed himself of it. He has made his motion in general terms, assigning no reason for it; the judgment of the court overruling the motion is also in general terms. The record, then, of the Union county circuit court does not show that the case is protected by the compact between Virginia and Kentucky. This court cannot know judicially that it was not a contest between two citizens, each claiming entirely under the laws of that state.

*255] *When the record of the Union county circuit court was transferred to the court of appeals, the course of that court requires, that the appellant, or the plaintiff in error, should assign the errors on which he means to rely. This assignment contains the first intimation that the title was derived from Virginia, and that the plaintiff in error relied on the compact between the two states. But this assignment does not introduce the error into the record, nor in any manner alter it. The court of appeals was not confined to the inquiry, whether the error assigned was valid in point of law. The preliminary inquiry was, whether it existed in the record. If, upon examining the record, that court could not discover that the plaintiff had asserted any right or interest in land derived from the laws of Virginia, the question, whether the occupying claimants' law violated the compact between the states, could not arise.

The 25th section of the act to establish the judicial courts of the United States, which gives to this court the power of revising certain judgments of state courts, limits that power in these words, "but no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statute, commissions or authorities in dispute." If the view which has been taken of the record be correct, it does not show that the compact with Virginia was involved in the case. Consequently, the question whether the act for the benefit of occupying claimants was valid or not, does not appear to have arisen; and nothing is shown on the record which can give jurisdiction to this court.

The counsel for the plaintiff in error has referred to former decisions of this court, laying down the general principle, that the title under a treaty or law of the United States need not be specially pleaded; that it need not be stated on the record, that a construction has been put on a treaty or law, which this court may deem erroneous; or that an unconstitutional statute of a state has been held to be constitutional. It is sufficient, if the record shows that misconstruction must have taken place, or the decision could not

*256] have been made. *Harris* v. *Dennie*, 3 Pet. 292, is a *strong case to this effect. That case recognises the principle on which the plaintiff in error relies; and says, "it is sufficient, if, from the facts stated, such a question must have arisen, and the judgment of the state court would not have been what it is, if there had not been a misconstruction from some act of congress, &c." But this misconstruction must appear from the facts stated, and those facts can be stated only on the record. In the case of *Harris* v. *Dennie*, a special verdict was found, and the court confined itself to a consideration of the facts stated in that verdict. Goods, in the custody

of the United States, until the duties should be secured, and a permit granted for their being landed, were attached by a state officer, at the suit of a private creditor. This fact was found in the special verdict, and the state court sustained the attachment. This court reviewed the act of congress for regulating the collection of duties on imports and tonnage, and came to the opinion, "that the goods in the special verdict mentioned were not, by the laws of the United States, under the circumstances mentioned in the said verdict, liable to be attached by the said Dennie, under the process in the said suit mentioned; but that the said attachment, so made by him, as aforesaid, was repugnant to the laws of the United States, and therefore, utterly void." In this case, no fact was noticed by the court which did not appear in the special verdict.

So, in the case of *Craig* v. *State of Missouri*. The parties, in conformity with a law of that state, dispensed with a jury, and referred the facts as well as law to the court. The court in its judgment, stated the facts on which that judgment was founded. It appeared from this statement, that the note on which the action was brought was given to secure the repayment of certain loan-office certificates, which a majority of the court deemed bills of credit, in the sense of the constitution. This statement of facts, made by the court of the state, in its judgment in a case in which the court was substituted for a jury, was thought equivalent to a special verdict. In this case, too, the court looked only at the record.

We say, with confidence, that this court has never taken jurisdiction, unless the case as stated in the record was brought within the provisions of the 25th section of the judiciary act. There are some cases in which the jurisdiction of *the court has been negatived, that are entitled to notice. *Owings* v. *Norwood's Lessee*, 5 Cranch 344, was an ejectment brought in the general court of Maryland, for a tract of land lying in Baltimore county. The defendant set up as a bar to the action, an outstanding title in a British subject, which, he contended, was protected by the treaty of peace. Judgment was given for the plaintiff, and this judgment being affirmed in the court of appeals, was brought before this court. The judgment was affirmed; and the court said, "whenever a right grows out of, or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the states; and whoever may have this right, it is to be protected; but if the party's title is not affected by the treaty, if he claims nothing under a treaty, his title cannot be affected by the treaty." Upon the same principle, the person who would claim the benefit of the compact between Virginia and Kentucky must show, and he can only show it on the record, that his case is within that compact. [*257

The case of *Miller* v. *Nicholls*, 4 Wheat. 312, bears, we think, a strong resemblance to this. William Nicholls, collector, &c., being indebted to the United States, executed, on the 9th of June 1798, a mortgage to Henry Miller, for the use of the United States, for the sum of $59,444, conditioned for the payment of $29,271. Process was issued on this mortgage from the supreme court of the state of Pennsylvania; in March 1802, a *levari facias* was levied, the property sold, and the money, amounting to $14,530, brought into court, and deposited with the prothonotary, subject to the order of the court. On the 22d of December 1797, the said Nicholls was found, on a settlement, indebted to the commonwealth of Pennsylvania in the sum

of $9987.15, and judgment therefor was entered on the 6th of September 1798. These facts were stated in a case agreed ; and the following question was submitted to the court : "Whether the said settlement of the said public accounts of the said William Nicholls, as aforesaid, on the 22d of December 1797, was and is a lien from the date thereof, on the *real estate of the said William Nicholls, and which has since been sold as aforesaid ?" On a rule made on the plaintiff in error to show cause why the amount of the debt due to the commonwealth should not be taken out of court, the attorney for the United States came into court and suggested, "that the commonwealth of Pennsylvania, ought not to be permitted to have and receive the money levied and produced by virtue of the execution in the suit, because the said attorney in behalf of the United States saith, that as well by virtue of the said execution, as of divers acts of congress, and particularly of an act of congress entitled an act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys, approved the 3d of March 1797, the said United States are entitled to have and receive the money aforesaid, and not the said commonwealth of Pennsylvania." Judgment was rendered in favor of the state of Pennsylvania, which judgment was brought before this court by writ of error. A motion was made to dismiss this writ of error, because the record did not show jurisdiction in this court, under the 25th section of the judiciary act. It was dismissed, because the record did not show that an act of congress was applicable to the case. The court added, "the act of congress which is supposed to have been disregarded, and which probably was disregarded by the state court, is that which gives the United States priority in cases of insolvency. Had the fact of insolvency appeared upon the record, that would have enabled this court to revise the judgment of the court of Pennsylvania ; but that fact does not appear." In this case, the suggestion filed by the attorney for the United States, alleged in terms, the priority claimed by the government under an act of congress which was specially referred to. But the case agreed had omitted to state a fact on which the application of that act depended. It had omitted to state, that Nicholls was insolvent, and the priority of the United States attached in cases of insolvency only. In this case, the act of congress under which the United States claimed, was stated in the record, and the claim under it was expressly made. But the fact which was required to *support the suggestion, did not appear in the record. The court refused to take jurisdiction.

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In the case at bar, the fact that the title of the plaintiff in error was derived from the laws of Viginia ; a fact without which the case cannot be brought within the compact, does not appear in the record : for we cannot consider a mere assignment of errors in an appellate court as a part of the record, unless it be made so by a legislative act. The question whether the acts of Kentucky in favor of occupying claimants were or were not in contravention of the compact with Virginia, does not appear to have arisen ; and consequently, the case is not brought within the 25th section of the judiciary act.

In the argument, we have been admonished of the jealousy with which the states of the Union view the revising power intrusted by the constitution and laws of the United States to this tribunal. To observations of

this character, the answer uniformly given has been, that the course of the judicial department is marked out by law. We must tread the direct and narrow path prescribed for us. As this court has never grasped an ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon it. The writ of error is dismissed, the court having no jurisdiction.

BALDWIN, Justice. (*Dissenting.*)—I am compelled to dissent from the opinion of the court in this case, for the following reasons: The certificate of the clerk of the court of appeals, attached to this record, is in these words: "I, Jacob Swigert, clerk of the court of appeals for the state aforesaid, do hereby certify, that the foregoing seventy-two pages contain a transcript of the record and proceedings in the case therein mentioned;" and I feel bound, on the preliminary question of jurisdiction, to consider all that is so contained to be a part of the record in this suit; so far, at least, as to give power to this court to examine whether the judgment of the court of appeals is erroneous or not.

On a motion to dismiss this cause for the want of jurisdiction, the only question which arises is, whether it comes *primâ facie* within the 25th section of the judiciary act? This must be decided on an inspection of the whole *record; and if it does appear that it presents any of the cases [*260 therein provided for, the motion must be refused. When the record comes to be judicially examined, this court may be of opinion, that though the question did arise which brings their powers into action, yet it did not come up in such a shape, or is not so stated in the record of the court of appeals, that this court can affirm or reverse it, for the specific cause assigned for error. If the question appears in any part of the record, it is enough, in my opinion, for jurisdiction. The manner in which it appears, seems to me, only to be examinable, after jurisdiction is entertained.

It appears on the record, that the plaintiff read in evidence, on the trial of the cause, a patent from Kentucky for six hundred acres of land, in pursuance of three military warrants, Nos. 1115, 1125 and 1153; entered on the 21st of July 1784, and surveyed the 23d of May 1785. The patent is set forth *verbatim*. As the state of Kentucky had no existence in 1784 or 1785, when these warrants were entered and surveyed, we cannot be judicially ignorant that these acts, as well as the issuing of the warrants, and the title founded on them, were under the laws of Virginia. As the compact between the two states is a part of the constitution of Kentucky, we cannot be ignorant of its existence, and that it relates to lands held in Kentucky under the laws of Virginia. After the plaintiff in ejectment had recovered judgment, it appears, that the court appointed commissioners to assess the value of the improvements made by the defendant on the land recovered from him by the plaintiff. The commissioners filed their report, awarding $1350; and the court rendered judgment for this sum. The parties were then reversed. Fisher, the defendant, moved the court to quash the proceedings; on their refusal, he sued out a writ of error from the court of appeals, summoning the plaintiff Cockerell, to "show cause, if any he can, why a judgment obtained by him against Fisher, in the Union circuit court, at the March term 1824, for $1350, the value of the improvements as assessed by the commissioners appointed under the occupying claimant law, besides costs,

should not be reversed, for the errors therein contained." *On the record being removed into the court of appeals, Fisher, among other reasons for reversing the judgment, assigned this: "The plaintiff deriving his title from Virginia, the act or acts of the state of Kentucky, on which the court has founded its opinion, is repugnant as to the compact with Virginia; therefore, void as to the case before the court, being against the constitution of the United States." The court gave a deliberate opinion on this exception, and adjudged the occupying claimant law to be constitutional, and affirmed the judgment of the circuit court.

All this appears in the seventy-two pages of the record, certified to us from the court of appeals. I do not feel authorized to declare, that what is so certified by the highest court is no part of the record, and judicially unknown to this court; nor when the record comes up, certified as one entire act, can I, on a question of jurisdiction, summarily decide, that one part is not as much within judicial cognisance as another. I cannot be ignorant that John Fisher, a plaintiff in ejectment, claimed under a patent to himself, founded on a warrant, entry and survey, made in Virginia, and under her laws, has recovered a judgment for his land; and that the defendant in the same suit has obtained a judgment against him for $1350, under the laws of Kentucky, which has been affirmed by the highest court in that state. In this, I cannot fail to see with judicial eyes, that the validity of a statute of a state has been drawn in question, on the ground of being repugnant to the constitution of the United States. It seems to me, to present the very question arising under the 25th section, clearly and definitely set forth, sufficiently explicit, at least, for jurisdiction, and containing, in my opinion, all the certainty requisite to enable this court to decide whether they will affirm or reverse the judgment of the court of appeals.

The court of appeals did not think, that the record of the circuit court did not bring the great question directly and distinctly for their consideration. It seems to me, that the fact of the plaintiff in ejectment being saddled with a judgment of $1350, at the suit of a defendant, for improvements, necessarily involves every question necessary to give this court jurisdiction. A *citizen of Kentucky has a right to question the validity of the occupying claimant law, on its alleged repugnancy to the constitution of the United States. Independent of the compact, this court would be bound to hear him on that question, on a writ of error from the court of appeals, on a title wholly emanating from Kentucky. It may be questioned, whether he could set up the compact, but he could, at least, claim the protection of the constitution in this court. This is all that is necessary for jurisdiction.

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We are not informed, that it is necessary in the circuit courts of Kentucky, for a party moving to quash a proceeding like the one contained in this record, to specify the grounds. This motion does not appear to have been overruled by that court for such a reason, but solely on the validity of the law; the judgment of the court of appeals was given expressly on the ground, that it was not repugnant to the constitution of the United States.

When the state courts decide the merits of a judgment in favor of the defendant in ejectment, for his improvements, I am not prepared to say, that their records are not cognisable here, and that the constitutionality of the law under which they are rendered, does not arise on the judgment itself:

and I do not know why we should be more astute to the mode in which a question is presented on a record, than the supreme court of a state. It is not a settled rule of law, that reasons for the motion should be assigned of record; that is a matter of practice to be regulated by rule. No reasons are assigned of record in this court, on motions to quash, or errors assigned on a judgment. They are stated to the court, and in my opinion, whenever a motion is made in any court, to quash any proceeding, the party moving may urge any reason showing it to be void, without specifying them on record, unless it is required by some rule. If the court of appeals had refused to consider the question, on the record of the circuit court, because the reasons and grounds of the motion were not or record, we might, if the rule of comity applies to decisions of state courts on questions affecting the jurisdiction of this court under the 25th section, have made their decision the rule for ours. But, in yielding to this objection, we consider the record of the circuit court in an aspect entirely different from *that in which it was viewed and solemnly acted on by the court of appeals. The [*263 occupying claimants' laws are public acts, of which all courts in Kentucky are bound to take judicial notice. The proceeding of Cockerell against Fisher was conducted under the immediate eye and order of the court: in its very nature, it imported to be taken under those laws. There were no other laws which would authorize such a judgment; and the validity of the judgment involved the validity of the law.

But I apprehend that it is not necessary to give jurisdiction to this court, that it should appear in the record of an inferior state court, that a question arises on the validity of a state law; we have only to look to the record of the court to which we may issue a writ of error, and whose judgment we must reverse or affirm; if it appears there, that the validity of a state law has been drawn in question, for the reason set forth in the 25th section, and that the decision of the highest court is in favor of its validity, the party against whom their judgment is given has a right to be heard in this court.

In this case, the writ of error from the court of appeals to the circuit court most distinctly alleges the judgment to have been under the occupying claimant law; the error assigned denies its validity, as repugnant to a compact and constitution; and the opinion and judgment of the court affirmed the validity. I cannot, therefore, consider this record as *coram non judice*. The question involved in it is as distinct to my mind, and as unavoidable, as special pleading can make; and the plaintiff in error has, in my judgment, an undoubted right to the opinion of this court, on the constitutional validity of the judgment rendered against him by the court of appeals of Kentucky.

This cause came on to be heard, on the transcript of the record from the court of appeals for the state of Kentucky, being the highest court of law in said state, and was argued by counsel: On consideration whereof, it is considered, ordered and adjudged by this court, that the writ of error in this cause be, and the same is hereby dismissed, for want of jurisdiction.