except Humphrey Marshall and Fowler; and as to him, the said Marshall, it is adjudged and decreed by this court, that the decree of the said circuit court be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, as to the said Humphrey Marshall, according to law and justice, and in conformity to the opinion and decree of this court; and it is further adjudged and decreed by this court, that this cause be and the same is hereby remanded to the said circuit court for further proceedings to be had therein, as to the said defendant Fowler, who did not answer the bill, and against whom there was no decree.

---

*479] *The Bank of the United States, Plaintiff in error, *v.* George B. Martin, Defendant in error.

Jurisdiction.

The district court of the United States for the state of Alabama has not jurisdiction of suits instituted by the Bank of the United States; this jurisdiction is not given in the act of congress establishing that court, nor is it conferred by the act incorporating the Bank of the United States.

Error to the District Court of Alabama.

Webster stated, that on inspecting the record of the proceedings in the court below, he was satisfied, the district court of Alabama had not jurisdiction of suits instituted by the Bank of the United States. It has already been decided, that the courts of the United States have jurisdiction in suits brought by the bank, only by virtue of the special provision in the charter; and the right of the bank to sue in the district court of Alabama is not given by the act incorporating the bank. He referred to the tenth section of the act of congress of September 1789: and to the act of the 21st of April 1820, constituting the courts of Louisiana. *Bank of United States* v. *Deveaux*, 6 Cranch 61.

Marshall, Ch. J., delivered the opinion of the court.—This is a writ of error to a judgment rendered in the court of the United States for the district of Alabama, dismissing a suit brought by the Bank of the United States, in that court, for want of jurisdiction. Consequently, the jurisdiction of that court presents the only question to be considered.

The act, which establishes a district court in the state of Alabama, declares, that the judge thereof "shall in all things have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled, 'an act to establish the judicial courts of the United States,' and an act entitled, 'an act in addition to the act entitled an act to establish the judicial courts of the United States,'" approved the 2d of March 1793. The 10th section of the judiciary act pro-
*480] vides, "that the *district court in Kentucky shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except appeals and writs of error hereinafter made cognisable in a circuit court, and shall proceed therein in the same manner as a circuit court." The 11th section of the same act describes the jurisdiction of the circuit court. A bank of the United States did not then exist; and it was determined by this court

in the case of the *Bank of the United States* v. *Deveaux*, "that the courts of the United States could not take jurisdiction of actions brought by the bank, unless the declaration contained averments which enabled the court to look behind the corporate character of the plaintiff."

The judiciary act, not having given the circuits courts jurisdiction over causes instituted by the Bank of the United States, cannot be construed to have given that jurisdiction to the district court of Kentucky. Of course, it has not been conferred on the district court of Alabama, by the act establishing that court. Neither has it been conferred by the act establishing the Bank of the United States. The judgment is affirmed, with costs.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the southern district of Alabama, and was argued by counsel: On consideration whereof, it is the opinion of this court, that there was no error in the judgment of the said district court, in dismissing this cause, for want of jurisdiction; whereupon it is considered, ordered and adjudged by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs.

---

*Alexander M. Peltz *et al.*, Plaintiffs in error, *v.* Joseph S. Clarke, Defendant in error. [*481

Mortgage.

It is undoubtedly well settled, as a general rule, that a court of law will not permit an outstanding satisfied mortgage to be set up against the mortgagor; yet the legal title is not technically released by receiving the money. This rule must then be founded on an equitable exercise by courts of law over parties in ejectment; it would be contrary to the plainest principles of equity and justice, to permit a stranger, who had no interest in the mortgage, to set it up, when it had been satisfied by the mortgagor himself, to defeat his title; but if this stranger had himself paid it off—if this mortgage had been bought in by him—he would be considered as an assignee, and might certainly use it for his protection.

The defendant in the circuit court was the owner of the equitable estate, and had paid off the mortgage, on his own account, and for his own benefit; the incumbrance, under these circumstances, was the property of him to whom the estate belonged in equity. The reason of the rule does not apply to such a case.[1]

Peltz *v.* Clarke, 2 Cr. C. C. 703, affirmed.

Error to the Circuit Court of the District of Columbia, for the county of Washington.

In the circuit court, the plaintiffs in error instituted an action of ejectment, for the recovery of a lot of ground in the district of Columbia. It appeared in evidence, that under a decree of the circuit court for the county of Washington, the estate of John Peltz, deceased, had been sold by Charles Glover and John Davis, trustees appointed for the purpose of making sale of the same, for the payment of his debts; and that the defendant in error had purchased at the sale, the property in controversy. No deed had been made by the trustees to the purchaser, in consequence of the loss of some title papers; but he had paid the greater portion of the purchase-money.

John Peltz, the ancestor of the plaintiffs in error, had, previously, to his decease, mortgaged the estate in controversy to Frederick Gammar; who

[1] See Barnes *v.* Mott, 64 N. Y. 397; Green *v.* Milbank, 3 Abb. N. C. 138.