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.

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*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.

proceeded on the mortgage, in chancery, against the trustees, Charles Glover and John Davis, and against Alexander and Michael Peltz, as heirs of John Peltz ; and obtained a decree of foreclosure, and for a sale of the mortgaged premises. The defendant in error, after the decree, having been so advised *482] by the mortgagor, paid to *him, with the consent and approbation, and in the presence of Mr. Glover, one of the trustees, the whole amount due upon the mortgage ; the sum paid being considered as part of the purchase-money due under the purchase from the trustees. On this payment being made, the mortgagor gave to the defendant in error, a receipt for the amount of the mortgage, and an order to enter the suit on the mortgage "settled." On the docket of the court, an entry was made in the mortgage suit, "settled, says complainant, see order."

The plaintiffs claimed the property as the heirs-at-law of John Peltz.

The plaintiffs prayed the court to instruct the jury, that the mortgage so paid was not outstanding and subsisting, so as to bar the plaintiffs' right to recover ; which the court refused to do ; to which the counsel for the plaintiffs excepted ; and judgment having been entered on the verdict for the defendant, the plaintiffs prosecuted this writ of error.

Key, for the plaintiffs in error, contended, that although the defendant might have a good defence in equity, for the mortgage money paid by him, he had no defence at law. He cited Runnington on Ejectment 119 ; Esp. N. P. 457–8 ; 6 Johns. 34 ; 2 Har. & McHen. 9, 17 ; 3 Ibid. 399.

Jones, for the defendant, said, that on the plaintiffs' own showing, there is a mortgage in fee, a forfeiture, and a decree of foreclosure. If a mortgage is satisfied by the mortgagor, it is admitted, that the mortgage cannot be set up ; but here, the purchaser, before he received a deed from the trustees, under their sale, paid off the mortgage ; and he sets it up for his protection. Having paid the amount of his purchase from the trustees, within a small sum, the defendant stands on his possession, and having paid for his own benefit the outstanding mortgage.

Marshall, Ch. J., delivered the opinion of the court.—This was an ejectment, brought by the plaintiffs in error against the defendant, in the *483] circuit court of the United States for the district of Columbia. *The plaintiffs, who are the heirs of John Peltz, gave the title of their ancestor in evidence.

The defendant then proved, that the land for which this ejectment was brought, was sold under a decree of the circuit court for the district of Columbia, and purchased by him, he being the highest bidder. That he gave his notes to Charles Glover and John Davis, the trustees appointed to make the sale under the decree ; was put into possession of the premises by them ; had paid nearly all the purchase-money, and declared his readiness to pay the residue, on receiving a title. He also gave in evidence a deed of mortgage, executed by John Peltz, in his lifetime, conveying the premises to Frederick Gammar.

The plaintiffs then proved, that a decree for the foreclosure and sale of the mortgaged premises had been obtained by the representatives of the mortgagee. The defendant, acting under the advice of one of the trustees, appointed to execute this decree, paid in part for his purchase, the money

due upon the mortgage, and the return showed the admission of the mortgagee, that it was settled. The plaintiffs prayed the court to instruct the jury, that this mortgage was not an outstanding title which could bar the plaintiffs' right to recover. The court refused to give this instruction, and the plaintiffs excepted to its opinion. The jury found a verdict for the defendant, and the judgment rendered on that verdict has been removed into this court by writ of error.

It is undoubtedly well settled, as a general principle, that a court of law will not permit an outstanding satisfied mortgage to be set up against the mortgagor. This is fully proved by the cases cited in argument by the counsel for the plaintiffs. Yet the legal title is not technically released, by receiving the money. This rule must then be founded on an equitable control exercised 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. *In the case at bar, the defendant is the owner of the equitable [*484 estate, and has paid off the mortgage, on his own account, and for his own benefit. This incumbrance, under these circumstances, is the property of him to whom the estate belongs in equity. The reason of the rule does not apply to the case. We do not think, that the mortgagor, his interest having been sold under a decree of court, could demand a reconveyance from the mortgagee to himself, the mortgage being satisfied by the purchase under that decree. There is no error in the judgment of the circuit court ; and it is 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 district of Columbia, holden in and for the county of Washington, and was argued by counsel : On consideration whereof, it is considered, 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.

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*Townsend B. Peyton and others, Appellants, v. Joseph Stith, Appellee. [*485

Land-law of Kentucky.—Adverse possession.—Landlord and tenant. Constructive possession.

Jenkin Phillips, on the 18th May 1780, "enters one thousand acres on the south-west side of Licking creek, on a branch called Buck-lick creek, on the lower side of said creek, beginning at the mouth of the branch, and running up the branch for quantity, including three cabins;" a survey was made on this entry, the 20th November 1795, taking Buck-lick branch, reduced to a straight line as its base, and laying off the quantity in a rectangle on the north-west of Buck-lick ; a patent was granted to Phillips on this survey, on the 26th June, 1796. This entry is sufficiently descriptive, according to the well-established principles of this and the courts of Kentucky, and gave Phillips the prior equity to the land, which has been duly followed up and consummated, by a grant, within the time required by the laws of Virginia and Kentucky, without any *laches* which can impair it. The proper survey under this entry was to make the line following the general course of Buck-lick the centre instead of the base line of the survey,