

*WILLIAM YEATON and others, Appellants, v. DAVID LENOX and others.

Practice.

A decree was pronounced by the district court of the United States for the district of Alexandria, in December 1829, from which the defendants appealed, but did not bring up the record; at January term 1832, the appellees, in pursuance of the rule of court, brought up the record and filed it; and on motion of their counsel, the appeal was dismissed. On the 9th of March 1832, a citation was signed by the chief justice of the court for the district of Columbia, citing the plaintiffs in the original action to appear before the supreme court, then in session, and show cause why the decree of the circuit court should not be corrected; a copy of the record was returned with the citation, "executed," and filed with the clerk. The record is brought up irregularly, and the case must be dismissed.

The act of March 1803, which gives the appeal from decrees in chancery, subjects it to the rules and regulations which govern writs of error; under this act, it has been always held, that an appeal may be prayed in court, when the decree is pronounced; but if the appeal be prayed, after the court has risen, the party must proceed in the same manner as had been previously directed in writs of error.

The judiciary act directs, that a writ of error must be allowed by a judge, and that a citation shall be returned with the record; the adverse party to have at least twenty days' notice; this notice, the court understands, is twenty days before the return-day of the writ.

APPEAL from the Circuit Court of the district of Columbia, and county of Alexandria.

Coxe, for the appellees, moved to dismiss this appeal; an appeal in the same having been dismissed at January term 1832, and this appeal not having been taken and filed, according to the provisions of the judiciary act and the rules of this court.

Neale, contra, cited the following cases, *Reily v. Lamar*, 2 Cranch 344; *Wood v. Lide*, 4 Ibid. 180; *The San Pedro*, 2 Wheat. 132; *Johnson v. Johnson's Administrators*, 2 Munf. 304.

MARSHALL, Ch. J., delivered the opinion of the court.—*In this case, a decree was pronounced by the court of the United States for [*221 the county of Alexandria, in December 1829, from which the defendants in that court appealed, but did not bring up the record. At January term 1832, the appellees, in pursuance of a rule of this court, brought in the record, filed it, and moved that the suit should be dismissed. The court ordered a dismissal. On the 9th day of March 1832, a citation was signed by the chief justice of the court for the district of Columbia, citing the plaintiffs in the original action to appear before the supreme court, then in session, and show cause why the decree of the circuit court should not be corrected. A copy of the record was returned with this citation "executed," and filed with the clerk. The appellees move to dismiss the suit, because the record has been irregularly brought up.

The act of March 1803, which gives the appeal from decrees in chancery, subjects it to the rules and regulations which govern writs of error. Under this act, it has been always held, that a decree may be prayed in court, when the decree is pronounced; but if the appeal be prayed, after the court has risen, the party must proceed in the same manner as had been previously directed in writs of error. The judiciary act directs, that a writ of error must be allowed by a judge, and that a citation shall be returned with the

Sampeyreac v. United States.

record ; the adverse party having at least twenty days' notice. This notice, we understand, is twenty days before the return-day of the writ of error. In this case, the appeal is not allowed by the judge, and the citation is to appear before the court then sitting. The record is brought up irregularly, and the cause must be dismissed.

ON consideration of the rule granted in this cause, and of the arguments of counsel, as well for the appellants as for the appellees, thereupon had, after mature deliberation, it is the opinion of this court, that the record is brought up irregularly, and that this appeal should be dismissed : whereupon, it is ordered and decreed by this court, that the appeal be and the same is hereby dismissed, with costs.¹

*222] *BERNARDO SAMPEYREAC and JOSEPH STEWART, Appellants, v.
UNITED STATES, Appellees.

Fraudulent land-claims.

Construction of the act of congress, passed the 5th of May 1830, entitled "an act for the further extending the powers of the judges of the superior court of the territory of Arkansas, under the act of the 26th May 1824, and for other purposes."

Under the provisions of an act of congress, passed on the 26th May 1824, proceedings were instituted in the superior court of the territory of Arkansas, by which a confirmation was claimed of a grant of land alleged to have been made to the petitioner, Sampeyreac, by the Spanish government, prior to the session of Louisiana to the United States, by the treaty of April 3d, 1803 ; this claim was opposed by the district-attorney of the United States ; and the court, after hearing evidence, decreed that the petitioner recover the land from the United States. Afterwards, the district-attorney of the United States, proceeding on the authority of the act of 8th May 1830, filed a bill of review, founded on the allegation that the original decree was obtained by fraud and surprise, that the documents produced in support of the claim of Sampeyreac were forged, and that the witnesses who had been examined to sustain the same were perjured ; at a subsequent term, Stewart was allowed to become a defendant to the bill of review, and filed an answer, in which the fraud and forgery are denied, and in which he asserted, that if the same were committed, he was ignorant thereof, and alleged that he was a *bona fide* purchaser of the land for a valuable consideration, from one John J. Bowie, who conveyed to him the claim of Sampeyreac by deed, dated about the 22d October 1828. On a final hearing, the court, being satisfied of the forgery, perjury and fraud, reversed the original decree : *Held*, that these proceedings were legal, and were authorized by the act of the 5th of May 1830.

Almost every law providing a new remedy, affects and operates upon causes of action existing at the time the law is passed ; the act of 1830 is in no respect the exercise of judicial powers ; it only organizes a tribunal with the power to entertain judicial proceedings ; the act, in terms, applies to bills filed, or to be filed ; such retrospective effect is no unusual course, in laws providing new remedies.

The act of 1830 does not require that all the technical rules, in the ordinary course of chancery proceedings, on a bill of review, shall be pursued in proceedings instituted under the law.

In the case of Polk's Lessee v. Wendell, 5 Wheat. 309, it is said by this court, that, on general principles, it is incontestable, that a grantee can convey no more than he possesses ; hence those, who come in under a void grant, can acquire nothing.

United States v. Sampeyreac, Hempst. 118, affirmed.

*223] *APPEAL from the Supreme Court of Arkansas. The appellant, Sampeyreac, under the act of congress of the 26th of May 1824, entitled "an act enabling the claimants to lands within the limits of the state of

¹ For a decision upon the merits, on a further appeal, see 8 Pet. 123.