a debtor may conscientiously prefer one to another; and it can make no difference, that the preferred creditor is his wife.

The remaining objection is, that the marriage-articles are inoperative and void, not having been recorded within the time prescribed by the laws of New Jersey for the registration of conveyances. To this objection several answers may be given, each of which is equally conclusive against the plaintiffs in error. In the first place, marriage-articles or settlements, as such, are not required by the laws of New Jersey, to be recorded at all, but only conveyances of real estate; and as to conveyances of real estate, the omission to record them, avoids them only as to purchasers and creditors, leaving them in full force between the parties. This is the express provision of the statute of New Jersey of 1820;(*a*) so that, notwithstanding the non-registration, the articles were good between the parties. In the next place, as to the personal estate, covenanted on the part of the defendant to be settled on his wife, whether furniture or money, it is clear, that the non-registration of the articles could produce no effect whatever. If the conveyance was free of fraud, it was, as to the personal estate, completely valid, even against creditors. In the next place, as to the real estate covered by the articles, whether these articles are treated as an actual conveyance, or as an executory contract, it is
*398] clear, that *except as to the creditors of the grantor, Mr. Stockton, they were completely valid and operative. Viewed as a conveyance, or as a contract for a conveyance, the husband could not, consistently with the avowed trusts, take any legal estate or executed use in the real estate. The grantor necessarily remained the legal owner, in order to effectuate the trusts of the settlement; and the husband could entitle himself to the benefit of the trusts provided in his favor, only in the events and upon the contingencies which are therein stated. He had no equitable interest therein, capable of a present appropriation by his creditors. In every view of the circumstances, it is therefore clear, that the non-registration of the articles does not touch the plaintiffs' rights; and the court were correct in their instruction to the jury, "that the marriage-contract is not void for want of being recorded in time."

Upon the whole, it is the unanimous opinion of the court, that the judgment of the circuit court ought to be affirmed, with costs.

Judgment affirmed.[1]

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*399] *Thomas Deye Owings and others, Appellants, *v.* Andrew Kincannon, Appellee.

Practice.

Appeal dismissed, because all the parties to the decree in the circuit court had not joined in the appeal to this court.

Appeal from the Circuit Court of Kentucky. In the circuit court, Andrew Kincannon, the appellee, filed a bill, on the 28th of December 1815, claiming a tract of land, by virtue of a prior entry to that under which the persons named in the bill asserted a title to, and held possession of the land;

(*a*) See act of 1820, Laws of New Jersey (ed. of 1821), p. 147.

[1] For a further decision in this case, see 15 How. 281; s. c. 2 Wall. Jr. C. C. 209.

and praying the court to compel the defendants to release all claim to the same, and that he might be quieted in the enjoyment and possession thereof.

The bill was filed against Thomas Deye Owings, James M. Blakey, Ralph Phillips, John Head, Benjamin Head, Milton Stapp, Charles Buck and nineteen others, as defendants, and was afterwards dismissed as to some, and abated as to others, of the persons so named. During the pendency of the proceedings, Ralph Phillips and John Head died, the former leaving Lewis W. R. Phillips, his heir, and the other leaving Nancy Head, his widow, and Sally Head, his only child, who, after the decease of their respective parents, became defendants in the cause.

At November term 1825, the circuit court made a decree in favor of the complainant, by which it was ordered, that the complainant to recover against the defendants, Thomas Deye Owings, James M. Blakey, Ralph Phillips, Milton Stapp, John L. Head and Charles Buck; and that said defendants do, on or before the first day of March next, by deed, with warranty against themselves and their heirs, convey and release unto the complainant, all their right, title and interest in and to the land represented on and designated on the connected plat, returned under an interlocutory decree theretofore made. On the 15th of May 1830, an order was made, granting an appeal, and the following bond was executed, a copy of which was certified in the record.

*"Know all men, by these presents, that we, Lewis W. R. Phillips, Sally Head, Nancy Head and ———— are held and firmly [*400 bound unto Andrew Kincannon, in the sum of five hundred dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents, and sealed with our seals, and dated this 15th day of May 1830. The condition of the above obligation is such, that whereas, the above-bound Lewis W. R. Phillips, Sally Head and Nancy Head, have prayed for and obtained an appeal from the seventh circuit court of the United States in and for the Kentucky district, to the supreme court of the United States, in a certain suit in chancery, wherein the said Andrew Kincannon was complainant, and Thomas D. Owings, Ralph Phillips, the ancestor of said L. W. R. Phillips, and John L. Head, the husband of said Sally Head, and ancestor of said Nancy Head, were defendants. Now, if the said Lewis W. R. Phillips, Sally Head and Nancy Head shall well and truly prosecute the said appeal with effect, or, on failure thereof, pay to the said Andrew Kincannon all costs that he incur in the defence thereof, and may be legally awarded against them, the said L. W. R. Phillips, Nancy and Sally Head, then the above obligation to be void, otherwise to remain in full force and virtue.

THOMAS TRIPLETT," [SEAL.]

On the 18th May 1830, the following citation was issued to Andrew Kincannon. "Whereas, an appeal has been prayed by Lewis W. R. Phillips, sole heir of Ralph Phillips, deceased, and Sally Head, widow, and Nancy Head, the only child of John L. Head, deceased, and is hereby granted, to the supreme court of the United States, to reverse a decree of the seventh circuit court of the United States, in and for the Kentucky district, at the November term 1825, wherein the said Andrew Kincannon is complainant, and Thomas D. Owings, &c., with ancestors of said L. W. R. Phillips and S. and N. Head were defendants. These, therefore, are to cite and com-

mand you, that you be and appear in the supreme court of the United States, at the city of Washington, on the second Monday in January next, *401] *and then and there to be heard, if anything you have to say upon the said appeal. Witness my hand, as an associate justice of the supreme court of the United States, and presiding judge of the seventh circuit court of the United States of America in and for the Kentucky district, this 18th day of May 1830. JOHN MCLEAN,
Justice Supreme Court United States.

Bibb, for the appellee, moved to dismiss the appeal, on the ground, that the decree of the circuit court of Kentucky was against Thomas Deye Owings, James M. Blakey, Milton Stapp and Charles Buck, as well as against the appellants; yet the appeal had not been prosecuted by any others than those named in the citation, Lewis W. R. Phillips, Sally Head and Nancy Head. By the record, it appears, that the appeal was allowed generally; but the bond is given by L. W. R. Phillips, Sally Head and Nancy Head only. It is, therefore, the proceeding of those parties only. No exception is taken to the execution of the bond, as by the decisions of the state courts of Kentucky, and also of the circuit court, a bond requiring surety, in legal proceedings, need not be executed by any but the surety of the parties for whom he has consented to become bound.

Loughborough opposed the motion. He contended, that as the appeal had been allowed to all the parties, the bond and citation operated generally, and all the defendants were before the court as appellants. But if this was to be considered as the separate appeal of some of the defendants, it was legal. *Coxe* v. *United States*, 6 Pet. 172. The appearance of the defendant in error, which was entered at January term 1831, and other proceedings on his part, by motion in the case, deprived him of a right to move to dismiss the appeal at this term.

*402] MARSHALL, Ch. J., delivered the opinion of the court.—*This is an appeal from a decree pronounced in the court of the United States for the district of Kentucky, by which Thomas Deye Owings, James W. Blakey, Ralph Philips, Milton Stapp, John L. Head and Charlas Buck were directed to convey and release to the complainant, all their right, title and interest in a tract of land mentioned in the decree. An appeal was allowed, and a bond executed by Lewis W. R. Phillips, Sally Head and Nancy Head, the condition of which recites "that whereas, Lewis W. R. Phillips, Sally Head and Nancy Head have prayed for and have obtained an appeal from the seventh circuit court of the United States in and for the Kentucky district, to the supreme court of the United States, in a certain suit in chancery, wherein said Andrew Kincannon was complainant, and Thomas D. Owings, Ralph Phillips, the ancestor of the said L. W. R. Phillips, and John L. Head, the husband of said Sally Head and ancestor of Nancy Head, were defendants. Now, if the said Lewis W. R. Phillips shall well and truly prosecute," &c.

The particular statement in the bond is considered by the court as explaining the general entry granting the appeal, so as to show that from a joint decree against six defendants, only two, represented by their heirs, have

appealed. A motion is now made to dismiss this appeal, because the decree being joint, all the parties ought to join in the appeal.

Upon principle, it would seem reasonable, that the whole cause ought to be brought before the court, and that all the parties who are united in interest ought to unite in the appeal. We have, however, found no precedent, in chancery proceedings, for our government in this case. But in the case of *Williams* v. *Bank of the United States*, 11 Wheat. 414, which was a writ of error, sued out by one defendant, to a joint judgment against three, the writ was dismissed ; the court being of opinion, that it had issued irregularly, and that all the def ndants ought to have joined in it.

By the judiciary act of 1789, decrees in chancery pronounced in a circuit court could be brought before this court only by writ of error. The appeal was given by the act of 1803. That act declares, "that such appeals shall be subject to the *same rules, regulations and restrictions as are prescribed by law in cases of writs of error." Previous to the passage [*403 of this act, the decree under consideration could have been brought into this court only by writ of error, in which writ all the defendants must have joined. The language of the act which gives the appeal, appears to us to require that it should be prosecuted by the same parties who would have been necessary in a writ of error. We think also, that the same principle would be applicable, from the general usage of chancery, to make one final decree binding on all parties united in interest. The appeal must be dismissed, having been brought up irregularly.

On consideration of the motion made in this cause, on a prior day of the present term of this court, to wit, on Thursday, the 17th day of January, by Mr. Bibb, of counsel for the appellee, to dismiss this appeal, on the ground that only two of the parties, represented by their heirs, have joined in this appeal, the decree of the said circuit court being a joint decree against six persons, and of the arguments of counsel thereupon had : It is considered by the court, that this appeal be dismissed, because only a part of those against whom the decree was made have joined in the appeal : whereupon, it is ordered, adjudged and decreed by this court, that this appeal be and the same is hereby dismissed, it having been brought up irregularly. And it is further ordered, adjudged and decreed by this court, that said appeal be and the same is hereby dismissed, with costs.

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*Joseph Barlow, Claimant of eighty-five Hogsheads of Sugar, [*404
Appellant, *v.* United States.

Drawback.—Ignorance of law.

Construction of the acts of congress relative to drawback on refined sugar. The legislature did not, in the enactments in reference to drawbacks, intend to supersede the common principle of the criminal as well as the civil jurisprudence of the country, that ignorance of the law will not exempt its violation.

United States *v.* Eighty-five Hogsheads of Sugar, 2 Paine 54, affirmed.

Appeal from the Circuit Court for the Southern District of New York. In the district court of the United States for the southern district of New York, a libel was filed by the United States, for the forfeiture of eighty-five