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death ; or, in the law language of Louisiana, declared executory ; and the property of which he died possessed, ordered to be seized and sold to satisfy the demand of the United States. The heirs of P. F. Dubourg de St. Colombe filed their bill, praying an injunction to stay proceedings at law on this judgment.

The bill alleges, that the estate of their parents was held in common, at the death of their mother, and that the moiety belonging to their mother descended, at her death, on them, and was not liable for debts afterwards contracted by their father. It also alleges, that they were infants, and that their father took possession of their estate, which he had wasted to an amount exceeding his effects in their hands. The law of Louisiana, they say, gave them a lien, at the death of their mother, on all the estate of their father, to the extent of this waste, exempt from the claim of any subsequent creditor.

*Several witnesses were examined, and several documents filed to prove the amount of the estate, at the death of their mother. The accounts are complex and intricate. The judge examined them, and being of opinion, that the estate was insolvent at the death of the mother, dissolved the injunction and decreed costs. This has been understood to be a final decree, and to be equivalent to dismissing the bill ; the plaintiffs appealed to this court.

We are of opinion, that a complex and intricate account is an unfit subject for examination in court, and ought always to be referred to a commissioner, to be examined by him and reported, in order to a final decree. To such report, the parties may take any exceptions ; and thus bring any question they may think proper before the court. The decree, therefore, is reversed, and the cause remanded to the court of the United States for the eastern district of Louisiana, with directions to refer the account to a commissioner, with instructions to settle and report the amount of the estate, at the death of the wife, in order to a final decree ; and to state such matters specially as he may think necessary, or as either party may require.

Decree reversed.

* *Ex parte* JUAN MADRAZZO.

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Suit against a state.

Juan Madrazzo, a subject of the king of Spain, filed a libel praying admiralty process against the state of Georgia, alleging that the state was in possession of a certain sum of money, the proceeds of the sale of certain slaves which had been seized as illegally brought into the state of Georgia ; and which seizure had been subsequently, under admiralty proceedings, adjudged to have been illegal, and the right of Madrazzo to the slaves, and the money arising from the sale thereof, established by the decision of the circuit court of the United States for the district of Georgia. The counsel for the petitioner claimed, that the supreme court had jurisdiction of the case, alleging that the 11th amendment of the constitution of the United States, which declares that the judicial power of the United States shall not extend to any suits in law or equity, did not take away the jurisdiction of the courts of the United States, in suits in the admiralty, against a state : *Held*, that this is not a case where property is in custody of a court of admiralty ; or brought within its jurisdiction, and in the possession of any private person ; it is a mere personal suit against a state, to recover proceeds in its possession, and such a suit cannot be commenced in this court against a state.

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Mr. *White* presented a libel, in the admiralty, against the state of Georgia, claiming relief, by the aid of this court, in favor of the libellant, a subject of his Catholic majesty the king of Spain, domiciled in the city of Havana.

The right of the libellant to maintain this proceeding against the state of Georgia Mr. *White* stated, depended on the construction the court would give to the eleventh amendment of the constitution of the United States, which declares, that "the judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by citizens of another state ; or by citizens or subjects of any foreign state." If the court should be of opinion that, notwithstanding this amendment, jurisdiction could be entertained in a suit in the admiralty against a state, he asked that a citation in the nature of admiralty process, or such other proceedings in the case, as the court should deem proper, should be awarded against the state of Georgia, returnable to the next term of this court.

*628] The libel stated, that the libellant, Juan Madrazzo, was a *subject of the king of Spain ; that about the 2d of July 1817, a vessel called the *Isabelita*, owned by him, with all the documents on board to show her ownership and character, cleared out from the city of Havana, for the coast of Africa, with a cargo of merchandise, his property, to trade there, exclusively on Spanish account, for a cargo of slaves, to be conveyed to the said city, there to be disposed of for his sole account, property and risk. On the coast of Africa, the vessel took on board, purchased with the said merchandise, one hundred and twelve slaves, and on her return-voyage towards Havana, about the first of October 1817, she was captured by a piratical or insurgent cruiser, under the commission of one *Aury*, or some other revolutionary flag of the revolted colonies of Spain, not then recognised as an independent government, nor in any manner authorized to act as a belligerent power, by the laws or consent of nations. The capturing vessel was called the *Successor*, commanded by one *Moore*, an American citizen, and was fitted out at Baltimore, and in the river *Severn*, in the state of Maryland, for the purpose of carrying on hostilities against the property and subjects of the king of Spain, with whom the United States then were and still are at peace ; wherefore, the said capture of the vessel was illegal, piratical and felonious.

The *Isabelita* and her cargo were carried by the *Successor* into the port of *Fernandina*, in the island of *Amelia*, at that time a colony of Spain, but usurped by the pretended patriots or revolutionists affecting the rights of sovereignty, and a separate station as a revolted independent government, but in truth composed of a band of adventurers, chiefly American citizens, united principally by the hope of plunder, and not acknowledged as an independent government for any civil or national purpose. There, the *Isabelita* and her cargo were condemned as lawful prize to the illegally commissioned piratical vessel, the *Successor*, by a tribunal pretending to exercise admiralty jurisdiction, under the usurped and assumed government of the place.

The vessel was afterwards restored to the libellant by a decree of the district court of the United States for the district of South Carolina, exercising jurisdiction as a court of admiralty, upon a libel filed for restitution

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on behalf of the libellant ; the proceedings in that case were invoked and referred to. The *slaves, the cargo of the Isabelita, were sold under [*629 the illegal decree pronounced at Fernandina, and by one William Bowen, the purchaser, were conveyed to the Creek nation, where, at a place called "the United States Agency," within the limits of the said nation, they were, to the number of ninety-five, seized and taken possession of by an officer of the United States, and brought within the limits and district of Georgia. These ninety-five slaves were subsequently delivered over to the government of the state of Georgia, on pretence that they had been illegally imported or introduced into the United States, contrary to an act of congress, and in compliance with an act of the assembly of the state of Georgia to carry the same into effect. A part of the slaves were sold by the government of Georgia, or its officers or agents, without any form of trial or judgment, as directed by the said act of assembly ; and the proceeds thereof, to the amount of \$40,000, paid into the treasury of the state of Georgia. The residue of the slaves, twenty-seven or thirty in number, remained in the possession of the state or its officers, or had been converted to or disposed of by the state, for its own use ; or wrongfully delivered to some persons not entitled to the same, and contrary to the will of the libellant. The slaves, or the proceeds of those sold, could not rightfully become the property of the state of Georgia, by virtue of the piratical capture, seizure or condemnation, or by the unlawful acts of the pretended purchaser of the same ; but the same remained the property of the libellant.

The libel further stated, that the governor of the state of Georgia, on the 20th of May 1820, on the pretence that the said negroes had been illegally transported to the Creek nation, and unlawfully imported into the United States from some foreign place, with intent to hold them to service and labor, filed a libel in the district court of the United States for the district of Georgia, alleging the unlawful importation, and that a demand of them had been made by the society for the colonization of free people of color in Africa ; which the governor alleged he was desirous of complying with, if authorized to do so by a decree of the court. No specification was made of the number of the slaves, and no mention was made of the illegal seizure and *sale of the slaves, in the information, or of the payment of the [*630 \$40,000 into the treasury of the state of Georgia.

The libel further stated, that William Bowen, who had purchased the slaves, the cargo of the Isabelita, put in a claim for the whole of the said slaves, on the 7th November 1820 ; alleging that they were his property, and were not intended to be introduced into the United States, but had been carried into the Creek nation for safety, with the intention to remove them to West Florida, a colony of Spain ; the truth of which allegation the libellant admitted. The libellant, hearing of the proceedings in the district court of Georgia, filed a libel claiming the slaves ; and the district court dismissed the claim of William Bowen and of the libellant, and decreed in favor of the governor of Georgia. That decree, on appeal to the circuit court of the United States was reversed ; the claims of the state of Georgia and of William Bowen were dismissed ; and that court decreed that the said slaves should be restored to the libellant, Juan Madrazzo, together with the proceeds of them, sold and paid into the treasury of the state of Georgia.

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From this decree, the governor of Georgia, on behalf of the state, appealed to this court.

From the district court of the United States of Georgia, a warrant of arrest, upon the libel of this libellant was issued; but the execution being prevented or evaded by the government and officers of the state of Georgia, the same was never served. A monition was also issued, and served on the governor and treasurer of the state of Georgia.

The libel proceeded to state the proceedings in the circuit court of the sixth circuit, in which it was ordered, that it should be held a sufficient execution of the warrant, if the governor of Georgia should sign an acknowledgment that the slaves were held by him, subject to the jurisdiction of the court; upon which, on the 15th of May 1823, John Clark, the governor of Georgia, signed a paper, filed in the court on the 24th December 1823, by which he acknowledged, that the governor of Georgia held the negroes levied on by virtue of sundry executions by the sheriff of Baldwin county, "subject to the order of the circuit court of the United States for the district of Georgia, after the claim of the said sheriff, or prior thereto, if *631] *the claim in the circuit court shall be adjudged to have priority of the proceeding in the state court."

The libel stated, that the executions referred to had been levied on the slaves, as the property of William Bowen, and the proceedings in the case showed that the same did not belong to him. That the libellant relied on the stipulation entered into by the governor of Georgia, by which the jurisdiction of the circuit court of the United States was admitted; and he proceeded to prosecute his appeal in the circuit court, in which no exception to its jurisdiction in the case was suggested or moved. In the circuit court, the rights of the libellant were established; the illegal outfit of the Successor was fully proved; and every other matter shown, to entitle him, as a Spanish subject, to the restitution of his plundered property. From the decree of the circuit court, appeals were entered to the supreme court of the United States.

The libel then stated the proceedings in the cases in the supreme court, of January term 1828, as the same are reported in 1 Pet. 110, &c., and complained that the jurisdiction of the supreme court, in the case, was denied by the governor of Georgia, on behalf of the state, in direct violation of the stipulation entered into by him, consenting to, and acknowledging the said jurisdiction; by which the said court were prevented proceeding to give a decree or judgment in the case. That by reason of the proceedings aforesaid, and of other acts of the state of Georgia, her officers and agents, which the libel alleged to have been tortious, and by the sale and dispersion of the slaves, the libellant was prevented seizing or identifying his property; he was without remedy or redress, unless this court will cause the state of Georgia to do him right in the premises.

Wherefore, the libellant prayed the court to award admiralty process against the state of Georgia, to be issued and served as the court might direct, citing the said state of Georgia, as well as all others concerned, to show cause why the proceeds of the said slaves, paid into the treasury of the said state, should not be paid over to the libellant; the slaves remaining in the possession of the state restored to him; a just and reasonable compensation decreed to him for the slaves, converted to her own

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*use, or otherwise taken by the state ; and such other damages allowed to him, as the owner of the slaves, as the court might think proper, against the state of Georgia, &c.

MARSHALL, Ch. J., delivered the opinion of the court.—This is not a case where the property is in custody of a court of admiralty, or brought within its jurisdiction, and in the possession of any private person ; it is not, therefore, one for the exercise of that jurisdiction. It is a mere personal suit against a state, to recover proceeds in its possession, and in such a case, no private person has a right to commence an original suit in this court against a state.

*GEORGE W. WARD and RICHARD K. CALL, Register and Receiver [*633
(U. S.), Appellants, v. LEWIS GREGORY.

The same Appellants v. JACOB ROBINSON and F. SWEARINGEN.

Appeal.

A *mandamus* was issued by the superior court of appeals of the middle district of Florida, directed to the register and receiver of the western land-district of Florida, commanding them to permit the entry and purchase of certain lands ; from this proceeding, the register and receiver appealed to this court. The appeal was dismissed ; the proceeding at *mandamus* being at common law, and therefore, the removal to this court should have been by writ of error.

APPEALS from the Court of Appeals for the territory of Florida.

White moved to dismiss these cases, on the grounds that the proceedings were at law in the courts of the United States for the territory of Florida, and that they had been brought up from the court of appeals of that territory, by appeals instead of by writs of error.

On the 13th December, 1826, on the applications of the appellees to the superior court of appeals for the middle district of Florida, a *mandamus* was issued directed to George W. Ward, the register of the western land-district of Florida, and to Richard K. Call, receiver of public moneys in said district, commanding them to permit the persons praying for the *mandamus* to enter and purchase certain sections of land, described in the writ, under the provisions of the act of congress of the 22d of April 1826, which gave rights of pre-emption in the purchase of land to certain settlers in the states of Alabama and Mississippi, and the territory of Florida. From the superior court, the case was removed by a writ of error, to the court of appeals for the territory of Florida ; and on the 21st of January 1831, the order of the superior court was affirmed by the court of appeals. From this judgment, the United States appealed to this court.

THE COURT ordered the appeal to be dismissed ; the proceeding by *mandamus* being at common law, and therefore, the cases should have been brought up by writs of error.