the jurisdiction of the court, and that the record was, in that respect, defective. In *Abercrombie* v. *Dupuis*, 1 Cranch 343, the plaintiffs below *116] averred, "that they do severally reside without *the limits of the district of Georgia, to wit, in the state of Kentucky." The defendant was called "Charles Abercrombie, of the district of Georgia, aforesaid." The judgment in favor of the plaintiff below was reversed, on the authority of the case of *Bingham* v. *Cabot*. In *Wood* v. *Wagnon*, 2 Cranch 9, the judgment in favor of the plaintiff below was reversed, because his petition did not show the jurisdiction of the court. It stated the plaintiff to be a citizen of the state of Pennsylvania, and James Wood, the defendant, to be "of Georgia, aforesaid." *Capron* v. *Van Noorden*, 2 Cranch 126, was reversed, because the declaration did not state the citizenship or alienage of the plaintiff in the circuit court. The same principle has been constantly recognised in this court.

The answer of James Brown asserts, that both plaintiff and defendant are citizens of the state of Louisiana. Without indicating any opinion on the question, whether any admission in the plea can cure an insufficient allegation of jurisdiction in the declaration, we are all of opinion, that this answer does not cure the defect of the petition. If the averment of the answer may be looked into, the whole averment must be taken together. It is, that both plaintiff and defendant are citizens of Louisiana.

The decree of the court for the district of Louisiana is to be reversed, that court not having jurisdiction; and the appeal to be dismissed. The cross-appeal, *Keene* v. *Brown*, is to be dismissed, the court having no jurisdiction.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is the opinion of this court, that the said district court could not entertain jurisdiction of this cause, and that, consequently, this court has not jurisdiction in this cause, but for the purpose of reversing the judgment of the said district court entertaining said jurisdiction: whereupon, it is ordered and adjudged by *117] this court, that the judgment of *the said district court be and the same is hereby reversed, and that this writ of error be and the same is hereby dismissed, for the want of jurisdiction. All of which is hereby ordered to be certified to the said district court, under the seal of this court.

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*118] *George Briscoe and others, Plaintiffs in error, *v.* The Commonwealth Bank of the State of Kentucky.

The Mayor, Aldermen and Commonalty of the City of New York, Plaintiffs, *v.* George Miln.

Practice.

In cases where constitutional questions are involved, unless four judges of the court concur in opinion, thus making the decision that of a majority of the whole court, it is not the practice of the court, to deliver any judgment, except in cases of absolute necessity.

Four judges not having concurred in opinion as to the constitutional questions argued in these cases, the court directed that the cases shall be re-argued at the next term.

Briscoe v. Commonwealth Bank.

GEORGE BRISCOE and others, Plaintiffs in error, *v.* The COMMONWEALTH BANK of the STATE of KENTUCKY.

ERROR to the Court of Appeals of the state of Kentucky. The legislature of the state of Kentucky, on the 29th November 1820, incorporated a "Bank of the Commonwealth," the whole capital stock of which, amounting to $2,000,000, belonged exclusively to the state, and consisted of certain funds, moneys, stocks, &c., enumerated in the act. The bills and notes of this bank were made receivable in all payments for taxes and other demands of the state; the interest arising from loans and discounts, after the payment of expenses, became part of the annual revenue, and the revenue of the state was made part of the capital of the bank. The management of the institution was intrusted to a president and twelve directors, chosen annually, by joint ballot, of both houses of the general assembly. See 2 Littell and Swigert's Digest of the Laws of Kentucky, §§ 1, 3, 5, 17, 24, 35, pp. 155, 156, 159, 162, 163.

On the 25th of December 1820, the legislature passed another act, making it lawful, when any execution should issue, for the plaintiff to indorse thereon, that notes of the Bank of Kentucky or its branches, or notes of the Bank of the *Commonwealth or its branches, would be received in [*118 payment; whereupon, such execution should be collected and replevied agreeable to the laws then in force, allowing three months' replevin only. But if any execution issued, without such indorsement, such execution was allowed to be stayed two years, on giving bond with approved security, &c. 2 Littell and Swigert's Digest, 459, 500, § 1, 2.

This was an action brought in March 1831, in the circuit court of Mercer circuit, Kentucky, by the bank so incorporated, against George H. Briscoe and others, to recover the sum of $2048.37, the amount of a promissory note given by them to the bank. The defendants in the court below the plaintiffs in error, pleaded, in substance, that the note sued on was given in renewal of another note, and that, of a preceding one; and that the only consideration given for the original note, by the said bank, was bills of credit issued by the state of Kentucky, through and by means of the said bank, contrary to the constitution of the United States. To the pleas of the defendants, the plaintiffs demurred, and the circuit court sustained the demurrers, and gave judgment against the defendants for the amount of the note, with interest and costs. The defendants appealed, and the court of appeals, at May term 1832, affirmed the judgment of the circuit court.

The court of appeals being the highest court of law of the state of Kentucky, in which a decision on the case could be had, and there being drawn in question rights attempted to be derived under a law of a state, impugned on the ground of its repugnance to the constitution of the United States, the case was removed from the court of appeals of Kentucky, to the supreme court of the United States, by writ of error, pursuant to the provisions of the 25th section of the judiciary act of 1789.

For the plaintiffs in error, three points were insisted on. 1. That the record shows a proper case for the jurisdiction of this court, within the provisions of the 25th section of the judiciary act of 1789. 2. That the act of the legislature of Kentucky establishing *the Bank of the Common- [*120 wealth, is unconstitutional and void; being repugnant to the provis-

ion of the constitution of the United States, which declares that no state shall emit bills of credit. 3. That the Bank of the Commonwealth has no right to recover on the promissory note which is the foundation of this suit, because the consideration was illegal.

The case was argued by *White* and *Wilde*, for the plaintiffs in error; and by *Hardin* and *Bibb*, for the defendant.

The opinion of the court was given on this, and on the following case, together.

The Mayor, Aldermen and Commonalty of the City of New York, Plaintiffs, *v.* George Miln.

Certificate of Division from the Circuit Court of the United States for the Southern District of New York.

The plaintiffs instituted an action against the defendant, George Miln, in the circuit court, to recover certain penalties and forfeitures alleged to have been incurred by him, for a violation of the provisions of an act of the legislature of the state of New York, entitled "an act concerning passengers in vessels coming to the port of New York," passed February 11th, 1824, by which it was, among other things, enacted, that every master or commander of any ship or other vessel, arriving at the port of New York, from any country out of the United States, or from any other of the United States than this state, shall, within twenty-four hours after the arrival of such ship or vessel in the said port, make a report, in writing, on oath or affirmation, to the mayor of the city of New York, or, in case of his sickness or absence, to the recorder of the said city, of the name, place of birth, and last legal settlement, age and occupation of every person who shall have been brought as a passenger in such ship or vessel, on her last voyage from *121] *any country out of the United States into the port of New York, or any of the United States, and from any of the United States, other than this state, to the city of New York, and of all passengers who shall have landed, or been suffered or permitted to land from such ship or vessel, at any place during such her last voyage, or have been put on board, or suffered or permitted to go on board of any other ship or vessel, with the intention of proceeding to the said city, under the penalty on such master or commander, and the owner or owners, consignee or consignees of such ship or vessel, severally and respectively, of seventy-five dollars for every person neglected to be reported as aforesaid, and for every person whose name, place of birth, and last legal settlement, age and condition, or either or any of such particulars, shall be falsely reported as aforesaid, to be sued for, and recovered as hereinafter provided. And further, that it shall be lawful for the said mayor, or, in case of his sickness or absence, for the said recorder, to require, by a short indorsement on the aforesaid report, every such master or commander of any ship of vessel to be bound, with two sufficient sureties (to be approved by the said mayor or recorder), to the mayor, aldermen and commonalty of the city of New York, in such sum as the said mayor or recorder may think proper, not exceeding three hundred dollars for each passenger not being a citizen of the United States, to indemnify, and save harmless, the said mayor, aldermen and commonalty, and the overseers of