*The Chesapeake and Ohio Canal Company, Plaintiff in error, *v.* The Union Bank of Georgetown.

Appellate jurisdiction.—Final judgment

In conformity with the charter of the Chesapeake and Ohio Canal Company, an inquisition, issued at the instance of the company, by a justice of the peace, in the county of Washington, district of Columbia, addressed to the marshal of the district, was executed and returned to the circuit court of the county of Washington, estimating the value of the lands mentioned in the warrant, and all the damages the owners would sustain by cutting the canal through the land, at $1000. Certain objections being filed to the inquisition, the court quashed the same; and a writ of error was brought on this judgment.

The order or judgment, in quashing the inquisition in this case, is not final; the law authorizes the court, "at its discretion, as often as may be necessary, to direct another inquisition to be taken." The order or judgment, therefore, quashing the inquisition is in the nature of an order setting aside a verdict, for the purpose of awarding a *venire facias de novo*.

Error to the Circuit Court of the District of Columbia, and county of Washington.

This case was argued by *Coxe* and *Swann*, for the plaintiff in error; and by *Key*, for the defendant.

Marshall, Ch. J., delivered the opinion of the court.—In pursuance of a warrant of inquisition, issued at the instance of the Chesapeake and Ohio Canal Company, by John Cox, a justice of the peace in and for the county of Washington, in the district of Columbia, and addressed to the marshal of the said district, an inquest of office was held by the said marshal, on certain lands in the said warrant mentioned, lying in the said county. The inquisition of the marshal and jurors, returned to the circuit court for the county of Washington, estimated the value of the lands in the warrant mentioned, and all the damages that the owners thereof would sustain by cutting the said canal through the said land, at $1000. Upon the return of the said warrant, the Chesapeake and Ohio Canal Company, by their counsel, moved the court for an order to have the same affirmed and recorded, unless good cause *be shown to the contrary. At a subsequent day, the Union Bank of Georgetown appeared by attorney, and filed certain objections to the said inquisition, which being argued, it was considered by the court, that the said inquisition be quashed; which judgment was brought before this court, by writ of error. [*260

This proceeding is in conformity with the charter of the Chesapeake and Ohio Canal Company, which was originally passed by the legislature of Virginia, in January 1824; and afterwards by the legislature of Maryland, in December of the same year. The act of Virginia was ratified and confirmed by the congress of the United States, in March 1825; so far as may be necessary for enabling the company formed by authority of the act, to carry into effect the provisions thereof in the district of Columbia.

The charter empowers the president and directors of the company "to agree with the owners of any land through which the said canal is intended to pass, for the purchase, or use and occupation thereof; and in case of disagreement, to apply to a justice of the peace of the county in which the land may lie, for a warrant of inquisition, on which such proceedings are directed as have been had in this case. The officer is to return this inquisition to the

clerk of his county, and unless good cause be shown against it, it shall be affirmed by the court and recorded; but if the said inquisition should be set aside, or if, from any cause, no inquisition shall be returned to such court, within a reasonable time, the said court may, at its discretion, as often as may be necessary, direct another inquisition to be taken, in the manner prescribed."

Before entering on the merits of the judgment of the circuit court for quashing this inquisition, a preliminary question is made to the jurisdiction of this court. Its appellate jurisdiction is extended by the act of congress, creating the circuit court for the district, to "any final judgment, order or decree, in said circuit court, where the matter in dispute, exclusive of costs, shall exceed the value," &c. The order or judgment in quashing the inquisition in this case, is not final. The law authorizes the court, "at its discretion, as often as may be necessary, to direct another inquisition to be taken."

*261] The order or judgment, therefore, quashing *the inquisition, is in the nature of an order setting aside a verdict, for the purpose of awarding a *venire facias de novo*. The writ of error is to be dismissed, the court having no jurisdiction of the cause.

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 this writ of error be and the same is hereby dismissed, for want of jurisdiction.

---

*262] *The Bank of the United States, Appellants, *v.* Jacob White, David Cummins and Robert Bennefil.

Chancery practice.

The 20th of the rules made by this court at February term 1822, for the regulation of proceedings in the circuit courts in equity cases, prescribes, "if a plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; and the defendant shall proceed to answer the plaintiff's bill; and if he fail to do so, within two calendar months, the same, or so much thereof as was covered by the plea or demurrer, may be taken for confessed, and the matter thereof be decreed accordingly."

By the terms of this rule, no service of any copy of an interlocutory decree, taking the bill *pro confesso*, is necessary, before the final decree; and therefore, it cannot be insisted on as a matter of right, or furnish a proper ground for a bill of review. If the circuit court should, as matter of favor and discretion, enlarge the time for an answer, or require the service of a copy, before the final decree; that may furnish a ground why that court should not proceed to a final decree, until such order was complied with; but any omission to comply with it, would be a mere irregularity in its practice; and if the court should afterwards proceed to make a final decree, without it, would not be error for which a bill of review lies; but it would be to be redressed, if at all, by an order to set aside the decree for irregularity, while the court retained possession and power over the decree and the cause.

No practice of the circuit court, inconsistent with the rules of practice established by this court for the circuit courts, can be admissible to control them.[1]

---

[1] In the case of Packer *v.* Nixon, in November 1831, Mr. Justice Hopkinson said, that though the profession may have been in the habit of disregarding one of the rules of equity practice, adopted by the supreme court, this can only be sustained, on the ground of waiver; when the objection is made, the court is bound to enforce the rule. MS. These rules are obligatory on the circuit courts. Jenkins *v.* Greenwald, 1 Bond 126.