tion whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, without costs.

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*United States *v.* Adam Randenbush. [*288

Autrefois acquit.

The defendant was indicted, in April 1833, in the circuit court for the district of Pennsylvania, for passing a counterfeit note, of the denomination of ten dollars, purporting to be a note of the Bank of the United States, with intent to defraud the bank, &c.; he pleaded, that the note described in the indictment had been heretofore given in evidence on the trial of the defendant, upon a former indictment found against him for passing another counterfeit ten dollar note, upon which indictment he had been acquitted.

The offence for which the defendant was indicted, and to which indictment he pleaded the plea of a former acquittal, was entirely a distinct offence from that on which the verdict of acquittal was found; the plea does not show that he had ever been indicted for passing the same counterfeit bill, or that he had ever been put in jeopardy for the same offence: The matter pleaded is no bar to the indictment.[1]

Certificate of Division from the Circuit Court of Pennsylvania. The defendant was indicted, in April 1833, in the circuit court for the district of Pennsylvania, for passing a counterfeit note of the denomination of ten dollars, purporting to be a note issued by the bank of the United States, with intent to defraud the bank, *scienter*, &c.

He interposed three several pleas to this indictment, in the second of which he averred, that the note describe in the indictment, &c., was heretofore given in evidence, with the facts and circumstances attending the said passing thereof, on the trial of defendant, upon a certain former indictment found against him for passing another ten dollar counterfeit note, to sustain that indictment; and that he was thereupon acquitted, &c. To this plea, the United States demurred, and the defendant joined in demurrer; but as the opinions of the judges were opposed as to the judgment to be given thereon, the case was certified for the opinion of this court.

The case was argued by the *Attorney-General*, for the United States. No counsel appeared for the defendant.

*The attorney-general submitted to the court the following points; [*289
and referred the court to the authorities on both sides of the question presented by them.

1. It appears by the record, that the offences for which the defendant was indicted, were not the same. 2 Hale's P. C. 244; 4 Hawk. 316, 314; 1 Chit. Crim. Law 453, 456; 1 Leach's Crown Law 242; 2 Ibid. 716; *Rex* v. *Clark*, 1 Brod. & Bing. 473; 9 East 437; *Van Houton* v. *Harvey*, 2 New York City Hall Recorder 73.

2. The acquittal upon the first indictment does not necessarily involve any decision upon the question presented by the last. 2 East 519. For the general principle: Ibid. 522; *Jackson* v. *Wood*, 3 Wend. 27; 8 Ibid. 9; Stark. Evid. part 2, § 65, 198, 202.

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[1] A prisoner having been tried and acquitted on a charge of having possession of a plate for printing counterfeit notes, may plead the same in bar to a second indictment, for having, at the same time, possession of another such plate; the act of possession is a single one. United States *v.* Miner, 11 Bl. C. C. 511. See United States *v.* Fleeke, 2 Ben. 456.

3. The passing of the note described in the last indictment, was not a fact embraced within the issue formed upon the former indictment; and if given in evidence on the trial of that issue, it could only have been as a collateral circumstance tending to prove the *scienter* in respect to the note described in the first indictment; and this does not protect the party from answering directly for the fact, in an indictment founded thereon. Stark. part 4, § 379–80, 382.

Marshall, Ch. J., delivered the opinion of the court.—The defendant was indicted, in April 1833, in the circuit court for the district of Pennsylvania, for passing a counterfeit note of the denomination of ten dollars, purporting to be a note of the Bank of the United States, with intent to defraud the bank, &c. He pleaded, that the note described in the indictment had been heretofore given in evidence, on the trial of the defendant, upon a former indictment found against him, for passing another counterfeit ten dollar note, upon which indictment he had been acquitted. The United States demurred to this plea, and the defendant joined in demurrer. The judges were opposed in opinion, on the question whether the judgment on the demurrer should be entered in favor of the United
*290] States or of the prisoner, which division of *opinion was ordered to be certified to the supreme court of the United States.

The offence for which the defendant was indicted, and to which indictment he pleaded the plea of a former acquittal, was entirely a distinct offence from that on which the verdict of acquittal was found.[1] The plea does not show that he had ever been indicted for passing the same counterfeit bill, or that he had ever been put in jeopardy for the same offence. We are, therefore, of opinion, that the matter pleaded is no bar to the indictment, and that the demurrer ought to be sustained. A certificate to this effect will be given.

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 Pennsylvania, and on the question and point on which the judges of the said circuit court were opposed in opinion, and which was certified to this court for its opinion, agreeable to the act of congress in such case made and provided, and was argued by counsel: On consideration whereof, it is the opinion of this court, that judgment on the demurrer to the second plea pleaded by the defendant to the indictment found against him, ought to be rendered for the United States. Whereupon, it is ordered and adjudged by this court, that it be certified to the said circuit court, that judgment on the demurrer to

[1] On the trial of an indictment for passing counterfeit notes, to prove the *scienter*, evidence may be given of the passing of similar counterfeit notes, or of the passing of notes of a different bank, at the same time, or of the defendant having them in his possession. United States *v.* Randenbush, Bald. 514. S. P. United States *v.* Hinman, Id. 292; United States *v.* Mitchell, Id. 366; United States *v.* Doebler, Id. 519. Where guilty knowledge, or an intent to defraud, is an ingredient of the crime, acts of a similar character, indicating such knowledge or intention on the part of the accused, may be proved, though they go to establish the commission of another separate offence. People *v.* Lyon, 1 N. Y. Crim. 400; Kramer *v.* Commonwealth, 87 Penn. St. 299; People *v.* Shulman, 76 N. Y. 624; Mayer *v.* People, 80 Id. 364. Thus, on a trial for the offence of receiving stolen goods, other acts of receiving, not too remote in point of time, may be given in evidence, to establish the guilty knowledge. Kilrow *v.* Commonwealth, 89 Penn. St. 480. But see Coleman *v.* People, 55 N. Y. 81.

the second plea pleaded by the defendant to the indictment found against him, ought to be rendered for the United States.

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*In the Matter of The Life and Fire Insurance Company of New York, Plaintiffs, *v.* The Heirs of Nicholas Wilson. [*291

Mandamus.—New trial.

The district judge of Louisiana refused to sign the record of a judgment rendered in a case by his predecessor in office; by the law of Louisiana, and the rule adopted by the district court, the judgment, without the signature of the judge, cannot be enforced; it is not a final judgment, on which a writ of error may issue, for its reversal; without the action of the judge, the plaintiffs can take no step in the case; they can neither issue execution on the judgment, nor reverse the proceedings by writ of error.

On a motion for a *mandamus*, the court *held:* The district judge is mistaken in supposing that no one but the judge who renders the judgment, can grant a new trial; he, as the successor of his predecessor, can exercise the same powers, and has a right to act on every case that remains undecided upon the docket, as fully as his predecessor could have done; the court remains the same, and the change of the incumbents cannot, and ought not, in any respect, to injure the rights of litigant parties. The judgment may be erroneous, but this is no reason why the judge should not sign it; until his signature be affixed to the judgment, no proceedings can be had for its reversal; he has, therefore, no right to withhold his signature, where, in the exercise of his discretion, he does not set aside the judgment. The court, therefore, directed, that a writ of *mandamus* be issued, directing the district judge to sign the judgment.

On a *mandamus*, a superior court will never direct in what manner the discretion of an inferior tribunal shall be exercised, but they will, in a proper case, require an inferior court to decide. But so far as it regards the case under consideration, the signature of the judge was not a matter of discretion; it followed as a necessary consequence of the judgment, unless the judgment had been set aside by a new trial; the act of signing the judgment is a ministerial and not a judicial act. On the allowance of a writ of error, a judge is required to sign a citation to the defendant in error; he is required, in other cases to do acts which are not strictly judicial.

The writ of *mandamus* is subject to the legal and equitable discretion of the court, and it ought not to be issued in cases of doubtful right; but it is the only adequate mode of relief, where an inferior tribunal refuses to act upon a subject brought properly before it.

A motion for a new trial is always addressed to the discretion of the court, and this court will not control the exercise of that discretion by a circuit court, either by a writ of *mandamus*, or on a certificate of division between the judges.

Motion for a *mandamus* to the District Court for the Eastern District of Louisiana. *This case, as stated in the opinion of the court, was as follows: [*292

This suit was commenced in the district court of the United States for the eastern district of Louisiana, on the 26th May 1826. The action was brought on a mortgage on real property and slaves, in the state of Louisiana, to secure the payment of a large sum of money; and at the first term, the following judgment was entered.

"In this case, the plaintiffs having filed in this court a transaction, entered into between the parties, before Greenbury Ridgley Stringer, Esq., a notary-public in and for the city of New Orleans, and the same being read to the court, it is thereupon ordered, adjudged and decreed, that, in pursuance of said transaction, judgment be entered up in favor of the plaintiffs, for all the notes therein specified, which have become due and payable, with seven per cent. interest thereon, from the time they and each of them respectively arrived at maturity, to wit, the sum of $1100, due on the 18th