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

of November 1824 ; the sum of $4000, due on the 18th of January 1825 ; the sum of $960, due on the 18th day of May 1825 ; the sum of $725, due on the 18th of November 1825 ; and the sum of $4000, due on the 18th of January 1826. It is further ordered, adjudged and decreed, in pursuance of the transaction aforesaid, that whenever any of the notes mentioned in said transaction, as yet not arrived at maturity, shall become due and payable, that then judgment shall be entered up for the plaintiffs, upon all and every of the said notes, as they arrive at maturity, with seven per cent. interest, from the time they become due and payable, until their final payment. It is further ordered, adjudged and decreed, that there shall be a stay of execution on said judgment, until the 18th day of January 1829 ; and that if the amount of the judgment in this suit, is not then paid, including principal, interest and costs, on said day, that the said slaves and movable property, described in the mortgage mentioned in plaintiff's petition, shall be sold, according to law, to satisfy the judgment in the premises."

By the code of practice of Louisiana, § 3, art. 546, it is provided, that,
*293] "the judge must sign all definitive or final *judgments rendered by him, but he shall not do so, until three judicial days have elapsed, to be computed from the day when such judgments were given." In conformity with the practice of the state courts, under this law, it seems, the district court of the United States in Louisiana, adopted a rule which required all its judgments to be signed. But the judge who rendered the above judgment departed this life, before he signed it, and no proceedings were had in the case until the 21st of May 1832, when a notice was filed in the clerk's office, to the heirs of Wilson, that at the next term, application would be made to the district judge, on behalf of the plaintiffs, to sign the judgment. A motion to this effect was made, which was overruled by the court.

At the last term of this court, a rule was granted on the district judge, to show cause why a *mandamus* should not be issued, commanding him to sign the judgment and direct execution. And at the present term, the district judge, in obedience to the rule, gave the following reasons why he refused to sign the judgment and award execution in the case.

"At the May term 1826, Judge Robinson caused the judgment to be entered. That he did not sign the judgment, although he held three terms afterwards, and did not die until in the autumn of 1828. And now the plaintiffs move, that I, as his successor, shall sign the judgment, in order to render it executory. This application is resisted by the defendants, on several grounds, but principally, 1st. Because they say, there never was any legal judgment given : 2d. That the record of the proceedings does not exhibit such a case as entitled the plaintiffs to judgment.

"If the first position of the defendants be correct, viz., that no legal judgment has been given, the application of the plaintiffs must fail. By a positive law of the state of Louisiana, all judgments rendered, if not set aside for legal cause, within a given number of days, must be signed by the judge, before execution can be taken out upon them ; in other words, the judgments are not complete, or rather are no judgments at all, until they are so signed. A law of this state expressly requires the signature of the judge, before the judgment can be carried into effect ; for there may arise
*294] sufficient reasons between the rendition *of a judgment *pro formâ*, and the time allowed for signing it, to induce the judge to withhold

his signature. That such reasons did arise in this case, may be presumed; for it is a legal presumption, that public functionaries perform their duty when required; and although it is not expected that a judge will call for and sign judgments, without being so required; yet it is strange, that a party so much interested, should not have made application to the judge, in the course of two years, to sign this judgment; and it is also remarkable, that the plaintiff's attorney of record, who procured the making of the judgment entries, never has, to this day, made any such application; but on the contrary, the record shows, that they subsequently instituted new suits, in the name of the assignees of the original plaintiffs, against the same defendants, to recover the amount now in controversy. Why did they proceed in this manner, if they had a right to the original judgment? The judge's signature to a judgment being, by our law, an essential part of it, inasmuch as it is a dead letter without it; it follows, that he who signs it, thereby makes it his own judgment. Therefore, were I to give validity to what is here called a judgment, by affixing to it my signature would it not be to pronounce on the rights of the parties whose cause I have never heard?"

These and other reasons assigned in illustration of the principles above stated, induced the district judge to refuse his signature to the judgment.

The case was argued by *Selden* and *Jones*, for the plaintiffs; and by *Coxe* and *Porter*, for the defendants.

The opinion of the court was given upon no other question argued by counsel, but the right of the judge to refuse to sign the judgment.

Upon this question, it was contended on the part of the plaintiffs, that the signing of the judgment was a ministerial, and not a judicial act. The signing is not of the essence of the judgment. It is a mere formality, not required at common law. It was not required by the Spanish law. That law required, that it should be rendered by day, in a judicial proceeding, in a proper place, after the parties were cited or had appeared; and that it should *be written in the records, and read publicly. 5 Partida, 3d tit. 22, l. 5. After it was pronounced, the judge could not alter it, except during the day on which it was rendered. Ibid. law 3, 1 Morcau and Carleton's translation, p. 264–5. [*295

The statute (commonly called the practice act, which by the act of congress of 26th May 1824, adopting the practice of the state courts, regulates the practice of the United States courts in Louisiana) which contains the provision requiring judgments to be signed, is of the 10th April 1805 (5 Martin's Dig. 164); and is not to be found in Morcau's Digest. The code of practice has changed the course of proceeding in the state courts; but that code is not observed in the district court of the United States; it was enacted on the 2d October 1825, since the act of congress regulating the practice of the United States courts in Louisiana. The inquiry, then, is to be directed to the laws in force previous to the adoption of the code of practice. The statute of 10th April 1805, follows the Spanish law, and requires all judgments to be pronounced in open court, entered on the minutes, and three days thereafter, signed—not by the judge who rendered them—but by the presiding judge of the court; provided they should not be set aside by motion for a new trial. This statute, in the same section, requires judgments to be docketed, and in the next (5 Martin's Dig. 166), provides, that

no execution shall issue on any judgment not docketed in form aforesaid. Will any one contend, that the docketing is of the essence of the judgment? It is required in the same manner as the signing is; and it is clear, that they are both purely ministerial acts—the rendition of the judgment, and the hearing of the motion for a new trial within the three days, being judicial acts, and after the three days, the judgment is then perfect in all its essential parts, and is to be completed in its formalities by being signed and docketed.

The present application is not an attempt to control the discretion of the judge. Under this Louisiana act, one of three things must be done—the judge must grant a new trial—arrest the judgment—or sign it. If he cannot arrest the judgment, and will not grant a new trial, the only other alternative is to sign the judgment. If no application be made for a new trial, *296] within three days, it is then the duty of the judge *to perfect the judgment, and the right of the party to have it perfected. No exercise of judicial functions is afterwards required, and it only remains for the judge to do the mere ministerial act of signing the judgment, which the parties, by omitting to apply for a new trial, have tacitly admitted must be carried into effect.

No application was ever made for a new trial. Indeed, on what ground could it be asked for or granted, on a judgment confessed with a stay of execution? Could it have been, Judge Robinson lived long enough for the application to have been made to him; he lived three terms after the confession of judgment. The case comes then before the court as one in which no application was made for a new trial to the only judge who, according to the argument, could grant it, and in which the defendants did not desire to have a new trial.

Though the discretion of a judge will not be controlled, and though a *mandamus* will not go to compel him to decide in a particular way, it will go to make him decide, so that a writ of error may be had. A *mandamus* lies to compel the signing of a bill of exceptions by the circuit court. *Ex parte Crane*, 5 Pet. 190. In 11 Mod. 137, is the case of a *mandamus* to a judge of probates, to grant administration to the next of kin; though it is a judicial act to grant it, a *mandamus* lies to compel the grant to the next of kin, in preference to any other. So, it lies to compel a court to proceed to judgment; as in *People* v. *Justices of Sessions of Chenango*, 1 Johns. Cas. 179; *Haight* v. *Turner*, 2 Johns. 371; *Smith* v. *Jackson*, 1 Paine 453. Also, to admit a deed to record, which is a mere ministerial act of the court. *Dawson* v. *Thruston*, 2 Hen. & Munf. 132. At the last term of the supreme court, in *Ex parte Bradstreet*, 7 Pet. 635, the district judge was ordered to reinstate the causes, make up the records, try the causes, and enter judgment, in order to give the demandant the benefit of a writ of error. The words of the statute of Westm. 2 (13 Edw. I.), c. 31, which requires the signing of the bill of exceptions, are not more imperative than are those of this Louisiana act: "if the party write the exception, and pray that the justices may put their seals to it for a testimony, the justices shall put their seals, and if one will not, another shall." By the *297] act of congress *of May 26th, 1790, ch. 38, the "presiding magistrate" is required to certify the proceedings of the court, so as to make them evidence in other courts. Could he refuse? And would there be any

greater interference with judicial discretion in granting the application at bar, than there is in the instances here enumerated.

It is not required by the Louisiana statute, that the judge who rendered the judgment should sign it. Had such been the provision of the statute, an impossibility might have been required. The judge who tried the cause might die within the three days, or he might resign, or be displaced, before the signing of the judgment. Could his successor, on general principles, in any of these cases, refuse to sign it, after the lapse of the three days? The judgment is the act of the court, and not merely on the individual judge. A court never dies; it will see that its judgments are completed and carried into effect. It is the duty of the successor to perfect and carry into effect all acts begun by his predecessor, and pending in the court at the time of his appointment.

And let it not be lost sight of, that no law or decision of Louisiana can be produced, requiring the judge rendering the judgment to sign it. Judge HARPER, in his reasons, cites a section of an act of 1817. But that section makes no change in the act of 1805, as to the formality of the signing the judgment, and the judge by whom that act may be done. The requisition of the statute is not, that "the judge rendering a judgment must remain long enough at the place of holding the court in order to sign it;" but that he shall remain three days after pronouncing judgment, to hear motions for new trials: the words are, "that seven judicial days from that on which a final judgment shall have been rendered, shall be allowed to make a motion for a new trial in the district court for the first district, and the parish court of New Orleans, and that until then the judgment shall not be signed by the judge; and that in all the other district courts of the state, the motion shall be made and the judgment signed within three judicial days only, and for that purpose it shall be the duty of judges of the district courts to sit three days longer after the last cause which they shall have determined in each term." The judge who tried the cause must remain the three days, to hear motions for new *trials, because no judge [*298
can hear such a motion, who has not heard the cause, and because this is a judicial act and not a ministerial act.

It is not necessary that the judgment should be signed on the third day; it may be signed afterwards. This is decided in *Thompson* v. *Chretien*, 12 Mart. 250 (1822). There were other questions in that cause; but one was, whether the judge must not sign the judgment on the third day, and whether it is not void, if signed afterwards. The court say, "the object of the legislature in the section quoted from 2 Mart. Dig. 164, was, to afford the party a delay of three days to state his objections, and for this purpose prohibited the judge to give effect to it by his signature, till the expiration of that delay." It is not intended to require the judge's signature on that day. In that case, the judgment was not signed till several days after its rendition.

There was no occasion for urgency in signing this particular judgment. It was confessed in May 1826, with a stay of execution till the 18th January 1829—very nearly three years. No execution could be issued till then. Why sign the judgment before? Signing virtually authorizes an execution to issue. Of what use would signing be, until the stay expired and an execution was wanted? Inadvertently omitted as it was, still the application

for this formal act to be done, would seem to be in full time, when execution was necessary, and the parties had become entitled to it.

Judge Harper's refusal to perfect the judgment, renders the condition of plaintiff and defendants unequal. Had he signed it, the defendants could have brought a writ of error, and obtained a review of the question, whether he, as the successor of Judge Robertson, was bound to sign the judgment, and also of the alleged irregularities. But the plaintiffs, by such refusal, are deprived not only of all remedy and benefit under their judgment in the court below, but also of the right of suing out a writ of error to this court. The district judge ought either to have signed the judgment, and put the defendants to a writ of error, or arrested the judgment, and afforded the plaintiffs the opportunity of suing out such writ—a right of which they ought not to be deprived.

*299] This is not a question of practice. There are no precedents *on the subject. The death of the judge has occasioned the difficulty; and judges so seldom die, that there is no jurisprudence yet formed in relation to their demise. It is a question of law, depending upon the statute and the ancient jurisprudence of Louisiana, and is simply this: Is or not the signing of a judgment, after the delays for granting a new trial have expired, a judicial or simply a ministerial act? The signing by the judge who rendered the judgment is not required by any law of Louisiana. It is not of the essence of the judgment, but is a mere formality, which does not affect its substantial properties and force.

Upon the whole, it is submitted, that Judge Harper ought to have signed this judgment. The act is merely ministerial. On general principles, as the successor of Judge Robertson, he was bound to complete the judgment. So, under the Louisiana act of 1805: there is not only nothing in that act which requires the judge who presided at the confession of the judgment to sign it, but by its express provisions, the signing is required to be by the presiding judge of the court—presiding at the time the application to sign should be made; words used, no doubt, to avoid the difficulty which would arise from the death, resignation or removal of the judge who presided at the trial.

Coxe and *Porter* contended, that this was not a case in which a judge was called upon to do an act merely ministerial. The district judge has given the facts and reasons which operated on him, judicially, to refuse his signature to the judgment. They are briefly these. The first fact on which he relies is the *laches* of the plaintiffs. He states that, from the records of the court, it appears, that Judge Robertson held three terms of the court, after the entry of the judgment, and did not die until more than two years after. He next adverts to the state law, which requires that to render a judgment valid, it must be signed within a certain number of days, unless set aside. He states that this has been the invariable practice of the court of the United States, in Louisiana; and he draws the inevitable consequence from the neglect of the plaintiffs in obtaining this signature, that they were conscious of the existence of good causes that would have induced Judge

*300] Robertson *to refuse signing it. He states positively, that the same attorneys who instituted the suit, have subsequently, in the same court, instituted new suits, in the name of assignees of the original plaintiffs,

against the same defendants, for the same cause of action. This alone would be sufficient to prevent his acting.

The signing of the judgment has been improperly called a ministerial act, a mere formality—it is neither. Whatever a judge may do, or may refuse to do, according to the circumstances of the case, is a judicial act. Here, after a judge has pronounced his opinion in open court, and had it entered on the minutes, he may refuse to perfect it, if he sees that injustice has been done, and order a new trial; or he may arrest the judgment for such radical errors in the proceedings as show that no valid judgment can be founded on them. Ordering the judge to sign this judgment, would be directing him what judgment to render; for it would be saying, You shall not grant a new trial; you shall not arrest the judgment; but you must confirm it. Now this is contrary to an express decision of this court, in the case of the *United States* v. *Lawrence*, 3 Dall. 42.

In his reasons, the judge remarks with some force on the injustice of forcing him, by a process of this kind, to decide a case on evidence which had not been offered to him, but to another; which (if the argument to show that this is a judgment, not a ministerial act, be correct) would be conclusive against the motion. Ought he not to be permitted to look into the proceedings? to see whether the defendant has appeared? whether he has been cited? whether the court has jurisdiction of the case? whether the party who appears by attorney is not stated to be an infant? to examine, in short, whether the proceedings are in legal form? Should any hardship on the part of the plaintiffs be urged, the answer is ready. Whatever of inconvenience exists, is of the plaintiffs' own creation; the delay has been produced by their own negligence; or worse, by their desire to overreach—and they are not without remedy. A new action, avoiding all the irregularities of this, would have produced a decision on the merits, in less time, and at less expense, than by this application; at the same time, that the mortgage, if it be a legal one, binds all the property as effectually *as a judgment, and carries back the lien to an earlier date. Authorities [*301 to show that the signature of the judgment is necessary, need scarcely be produced. For the satisfaction of the court, however, the following statutory provisions are referred to: 1 Acts of the Territory of Orleans, p. 234, § 13; 2 Martin's Digest 164, No. 11; Acts of 1817, p. 32, § 11. All these acts may be found in Leslet's Digest, Code of Practice 546.

The act required of the judge of the district, by the *mandamus*, was entirely judicial. He had refused to sign the judgment, and had given his reasons for the same, and he is now to reverse this judgment. A *mandamus* is not the proper remedy. It is never issued, when the act required to be done under it is other than ministerial; it is properly to be directed to the judge, and not to court; and in this case, it is judicially known, that the court is composed of but one judge. There was no judgment rendered by Judge Robertson. The case was not, therefore, judicially disposed of, before his death; and the present judge, before he can sign the judgment, must examine the record. This was done by him, and he judicially decided, that he could not sign the record. This is conclusive; if the judge is anything more than a mere clerk to perfect the record. What acts of a judge are ministerial? They are all judicial. Does this court act ministerially, in any case, or on any occasion?

The law of Louisiana requires the judge to remain three days at the place where the court is held, before he signs the judgment, which affords an opportunity to examine if there are any reasons for a new trial. But in this case no opportunity for a new trial can be allowed, if the duty of the judge is absolute, if he must sign the judgment. The law does not require that a new trial shall be asked in three days; if it is not asked in that time, and judgment has not been signed, the case is open for the application. Upon the authority of the civil code of Louisiana, the judge may order a new trial, up to the time of signing the judgment. And in this case, a new trial could have been given by the judge of the district court, if he had been required to grant it. No application was before him for any purpose but
*302] to obtain his *signature to the judgment. The proceedings in this case are evidently defective, as it is admitted, the minors, heirs of Nicholas Wilson, had not notice of the application for signing the judgment.

Jones, in reply, contended, that after the judgment had been entered on the minutes, as the oral judgment of Judge ROBERTSON, the proceedings to complete the record were mere matters of form. In this case, particularly, the form of signing was all that was necessary, for the party had made no application for a new trial. The state of record was such as that the judge could sign the judgment; as is done when a warrant of attorney is given, which fully authorizes the entry of judgment. Judges frequently act ministerially. The certificate to a record, and the signature of a judge in allowing a writ of error, are ministerial acts.

There is no force in the objection, that as the present judge did not sit on the trial of this cause, he cannot grant a new trial. It often occurs, that new trials are moved for and granted by other judges than those before whom the cases have been tried. New trials are moved for "in banc," before all the court; trials take place at *nisi prius*, before a single judge.

MCLEAN, Justice, delivered the opinion of the court.—In the argument, on the motion to make the rule for a *mandamus* absolute, various objections were taken against the jurisdiction of the district court. It is insisted, that the plaintiffs, in their corporate capacity, can neither make a contract in Louisiana, nor enforce it in that state by suit; and if they could, the proceedings in the case were erroneous, and might be reversed on a writ of error. In the consideration of the question now before the court, they do not consider themselves authorized to examine into the regularity of the proceedings in the case before the district court, as they would do on a writ of error. The point of inquiry is, whether the district judge, under the circumstances of the case, was bound to sign the judgment.

The writ of *mandamus* is subject to the legal and equitable discretion
*303] 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. In this case, the district judge seems to think, that as the judgment was not rendered by him, he has no power to grant a new trial, as he is not acquainted with the facts and circumstances which should influence his discretion in making such an order; and that, consequently, he is not bound to sanction the judgment, by his signature. 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, unless it be the one they have taken, in this case. They can neither issue execution on the judgment, nor reverse the proceedings by writ of error. And if the reasons assigned by the judge shall be deemed a sufficient answer to the rule, the plaintiffs are without remedy on their judgment.

But 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 charge of the incumbents cannot and ought not, in any respect, to injure the rights of litigant parties. The case referred to in 6 Wheat. 542, asserts nothing in opposition to this principle. 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.

After the rendition of the judgment, three days are allowed by the law of Louisiana, within which to more for a new trial; and if no new trial shall have been granted, the judge is required to sign the judgment, at the expiration of this time. It may be in the power of a judge, under this law, in the state court, where the judgment has not been signed, to grant a new trial, after the lapse of a much longer time than is specified in *the act; [*304
but this question is not raised in the present case, as the district judge has, in not granting a new trial, decided against it. It is immaterial, what reasons may have influenced this decision, as it was a matter which rested in his discretion. But the important inquiry is, whether, after refusing to grant a new trial, either on a full consideration of the merits, or because he had not a sufficient knowledge of them, he was not bound 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 the 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 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. As well might a judge refuse to enter up the judgment upon a verdict, which he would not, or could not, set aside, as to withhold his signature in the present case. The cause should be placed in such a posture as to enable the plaintiffs to proceed to another trial, or to take out execution on their judgment. As the former has not been done, the latter may be claimed by the plaintiffs as a matter of right.

This court, therefore, direct, that the writ of *mandamus* be issued, directing the district judge to sign the judgment, agreeable to the prayer of the plaintiffs.

On motion of plaintiff for a *mandamus* to the district court of the United States for the eastern district of Louisiana: On consideration of the rule granted in this cause by this court, on the 14th day of March, in the year of
*305] our Lord *1833, which was duly served on the judge of the district court of the United States for the eastern district of Louisiana, as by reference to the proof of service, on file in the clerk's office, will appear, and of the return of the said judge, setting forth his reasons at large, as also of the arguments of counsel, for both the plaintiff and defendant in this cause, thereupon had, it is now here considered, ordered and adjudged by this court, that the said rule be and the same is hereby made absolute; and it is further ordered and adjudged by this court, that a writ of *mandamus* be and the same is hereby awarded, directing the said district judge to sign the judgment, and to award execution thereon, agreeable to the prayer of the plaintiff in the proceedings mentioned.

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*306] *In the Matter of the Life and Fire Insurance Company of New York, Plaintiff, *v.* Christopher Adams.

Mandamus.

Motion for a *Mandamus* to the District Court for the Eastern District of Louisiana.

McLean, Justice, delivered the opinion of the court.—At the last term of this court, a rule was granted on the district judge of the United States for the eastern district of Louisiana in this, the same as in the preceding case of the same plaintiffs, against the Heirs of Nicholas Wilson; and as the principles in both cases are substantially the same, the court also direct that a *mandamus* be issued in this case, commanding the district judge to sign the judgment, agreeable to the prayer of the plaintiffs' counsel.

On motion of plaintiff for a *mandamus* to the district court of the United States for the eastern district of Louisiana: On consideration of the rule granted in this cause by this court, on the 14th day of March in the year of our Lord 1833, which was duly served on the judge of the district court of the United States for the eastern district of Louisiana, as by reference to the proof of service, on file in the clerk's office, will appear, and of the return of said judge, setting forth his reasons at large, as also of the arguments of counsel, for both the plaintiff and defendant in this cause, thereupon had, it is now here considered, ordered and adjudged by this court, that the said rule be and the same is hereby made absolute; and it is further ordered and adjudged by this court, that a writ of *mandamus* be and the same is hereby awarded, directing the said district judge to sign the judgment, and to award execution thereon, agreeable to the prayer of the plaintiff, in the proceedings mentioned.[1]

[1] For further proceedings in this case, see 9 Pet. 573.