reversed, and that this cause be and the same is hereby remanded to the said circuit court, with directions to the said court to reform the report of the commissioner, so as to allow the defendant at the rate of $10.87 per week for his expenses in New York, instead of one dollar per day.

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*361] BANK OF THE UNITED STATES, Plaintiff in error, *v.* ANDREW DONNALLY, Defendant in error.

Pleading.—Statute of limitations.—Lex fori.

Action of debt, brought by the Bank of the United States, upon a promissory note, made in the state of Kentucky, dated the 25th of June 1822, whereby, sixty days after date, Campbell, Vaught & Co., as principals, and David Campbell, Steeles and Donnally, the defendant, as sureties, promised to pay, jointly and severally, to the order of the president, directors and company of the Bank of the United States, $12,877, negotiable and payable at the office of discount and deposit of the said bank, at Louisville, Kentucky, value received, with interest thereon, at the rate of six per centum per annum thereafter, if not paid at maturity. The declaration contained five counts; the fourth count stated, that the principal and sureties "made their other note in writing," &c., and thereby promised, &c. (following the language of the note), and then proceeded to aver, "that the said note in writing, so as aforesaid made, at &c., was and is, a writing without seal, stipulating for the payment of money; and that the same, by the law of Kentucky, entitled an act, &c. (reciting the title and annexing the enacting clause), is placed upon the same footing with sealed writings, containing the same stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes, having the same force and effect as a writing under seal;" and then concluded with the usual assignment of the breach, by non-payment of the note. The fifth court differed from the fourth principally in alleging, "that the principals and sureties, by their certain writing obligatory, duly executed by them, without a seal, bearing date, &c., and here shown to the court, did promise, &c.;" and contained a like averment with the fourth, of the force and effect of such an instrument by the laws of Kentucky. The defendant demurred generally to the fourth and fifth counts; and the district court sustained the demurrers.

We are of opinion, that the fourth and fifth counts are, upon general demurrer, good; and that the judgment of the court below, as to them, was erroneous; they set out a good and sufficient cause of action, in due form of law; and the averment that the contract was made in Kentucky, and that, by the laws of that state, it has the force and effect of a sealed instrument, does not vitiate the general structure of those counts, founding a right of action on the note set forth thereon; at most, they are surplusage; and if they do not add to, they do not impair, the legal liability of the defendant, as asserted in the other parts of those counts.

According to the laws of Virginia, the defendant had a right to plead as many several matters, whether of law or fact, as he should deem necessary for his defence, and he pleaded *nil debet* to the three first counts of the declaration, on which issue was joined; the defendant also pleaded the statutes of limitation of Virginia to the other counts. The court held the plea
*362] of the statute of limitations a good bar to all the counts, and gave judgment in favor *of the defendant. The statute of limitations of Virginia provides, that all actions of debt, grounded upon any lending or contract, without specialty, shall be commenced and sued within five years, next after the cause of such action or such suit, and not after; the act of Kentucky, of the 4th of February 1812, provides, "that all writings hereafter executed, without a seal or seals, stipulating for the payment of money or property, or for the performance of any act, duty or duties, shall be placed upon the same footing with sealed writings, containing the like stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes having the same force and effect, and upon which the same species of action may be founded, as if sealed:" *Held*, that the statute of limitations of Virginia, precluded the plaintiff's recovery in the court where the action was instituted; the statute pleaded (the statute of Kentucky) not being available in Virginia.[1]

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[1] S. P. Townsend *v.* Jemison, 9 How. 407; Nash *v.* Tupper, 1 Caines 402; Lincoln *v.* Battelle, 6 Wend. 475.

United States Bank v. Donnally.

As the contract, upon which the original suit was brought, was made in Kentucky, and was sought to be enforced in the state of Virginia, the decision of the case in favor of the defendant, upon the plea of the statute of limitations would operate as a bar to a subsequent suit in the same state; but not necessarily as an extinguishment of the contract elsewhere, and especially, in Kentucky.

The general principle adopted by civilized nations is, that the nature, validity and interpretation of contracts, are to be governed by the laws of the country where the contracts are made, or are to be performed; but the remedies are to be governed by the laws of the country where the suit is brought; or as it is compendiously expressed, by the *lex fori*. No one will pretend, that because an action of covenant will lie in Kentucky, on an unsealed contract made in that state, therefore, a like action will lie in another state, where covenant can be brought only on a contract under seal.

It is an appropriate part of the remedy which every state prescribes to its own tribunals, in the same manner in which it prescribes the times within which all suits must be brought. The nature, validity and interpretation of the contract, may be admitted to be the same in other states; but the mode by which the remedy is to be pursued, and the time within which it is to be brought, may essentially differ; the remedy, in Virginia, must be sought within the time, and in the mode, and according to the descriptive character of the instrument, known to the laws of Virginia; and not by the description and character of it, presented in another state.

An instrument may be negotiable in one state, which yet may be incapable of negotiability by the laws of another state; and the remedy must be, in the courts of the latter, on such instrument, according to its own laws.

Error to the District Court for the Western District of Virginia. The plaintiffs in error instituted an action of debt in the court below, to November term 1829, against the defendant, he being the only party to the instrument sued upon, who was found within the jurisdiction of the court. *The declaration contained five counts upon the following note, executed by the defendant and several others: [*363

$12,877. June 26th, 1832.

Sixty days after date, we, Campbell, Vaught & Co., as principals, and David Campbell, and Steele, Donnally & Steeles, as sureties, do promise to pay, jointly and severally, to the order of the president, directors and company of the Bank of the United States, without defalcation, twelve thousand, eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposit of the said bank, at Louisville, Kentucky, value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity.

Campbell, Vaught & Co.
David Campbell.
Steele, Donnally & Steeles.

The first, second and third counts in the declaration set out the note as a simple-contract debt, to which the defendant pleaded *nil debet*, and the statute of limitations of Virginia; and the plaintiff filed replications, to which the defendant demurred. Judgment in favor of the defendant was entered by the court on these three counts. The third and fourth counts were as follows:

"And whereas also, the said Andrew Donnally and Richard Steele, William Steele, Robert M. Steele and Adam Steele, partners trading under the firm of Steele, Donnally & Steeles, heretofore, to wit, on the 26th day of June 1822, and in the lifetime of said Adam Steele, Robert Steele and William Steele, since deceased, at Louisville, in the state of Kentucky, to wit, at the district aforesaid, with one David Campbell, and the firm of Camp-

bell, Vaught & Co., made their other note in writing; which said note, signed by the said firm of Steele, Donnally & Steeles, and dated the day and year aforesaid, is to the court here shown, and thereby promised, jointly and severally, the said Campbell, Vaught & Co., as principals, and the said David Campbell and the said Steele, Donnally & Steeles, as sureties, sixty days after the date thereof, to pay to the order of the president, directors and company of the Bank of the United States, without defalcation, the sum of twelve thousand, eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposit of said bank, at
*364] *Louisville, Kentucky, value received, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. And plaintiffs aver, that said note in writing, so as aforesaid made at Louisville in the state of Kentucky, and payable at said place, was and is a writing without seal, stipulating for the payment of money; and that the same, by the law of Kentucky, entitled "an act to amend the law of proceedings in civil cases, approved February 4th, 1812" (an extract from which said law, duly authenticated under the seal of the said state of Kentucky, and duly certified, is to the court here shown), is placed upon the same footing with sealed writings containing the like stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes, having the same force and effect, as a writing under seal. And although said sum of money, in said last-mentioned note specified, has long been due and payable, according to the terms of said note, yet the said Andrew Donnally, Richard Steele, Robert M. Steele, Adam Steele and William Steele, in the lifetime of said Robert M., Adam, and William Steele, and the said Donnally and Richard Steele, since the death of said Robert M., William and Adam Steele, have not, nor has either of them, nor has the said David Campbell, or the said firm of Campbell, Vaught & Co., or either of them, paid unto said plaintiffs said last-mentioned sum of twelve thousand, eight hundred and seventy-seven dollars, or any part thereof, but to pay the same, or any part thereof, to said plaintiff, the said firm of Steele, Donnally & Steeles, in the life of the said deceased partners, and the said David Campbell, and Campbell, Vaught & Co., refused, and the said defendant and Richard Steele, surviving partners of the late firm of Steele, Donnally & Steeles, still refuse. By reason whereof, an action hath accrued to said plaintiffs to demand and have of and from said defendant said last mentioned sum of twelve thousand, eight hundred and seventy-seven dollars, other parcel of said sum of money above demanded.

"And for that whereas, afterwards to wit, on the 26th day of June, in the year 1822, at Louisville, in the state of Kentucky, to wit, at Clarksburg, in this district, the aforesaid Campbell, Vaught & Co., as principals, and the aforesaid David Campbell and Richard Steele, Andrew Donnally, Adam
*365] Steele, *Robert M. Steele and William Steele, as sureties, the said Richard, Andrew, Adam, Robert and William, acting under the firm and style of Steele, Donnally & Steeles, by their certain writing obligatory, duly executed by them, without a seal, bearing date the same day, and here shown to the court, did promise and bind themselves, jointly and severally, to pay the plaintiffs, without defalcation, another sum of twelve thousand, eight hundred and seventy-seven dollars, negotiable and payable at the office of discount and deposit of the said plaintiffs, at the aforesaid town of

Louisville, in Kentucky, with interest thereon at the rate of six per centum per annum thereafter, if not paid at maturity. And the said plaintiffs in fact say, that though the said last-mentioned sum of money, when due and payable, according to the tenor and effect of said writing, to wit, on the 28th day of August 1822, at the office of discount and deposit aforesaid, was duly demanded, the same was not paid by the said Campbell, Vaught & Co., David Campbell, and Steele, Donnally & Steeles, or by any or either of them, nor have the said Compbell, Vaught & Co., David Campbell, and Steele, Donnally & Steeles, or any or either of them, at any time, paid the same, or any part thereof, but the same to pay, they, and each of them, though often requested, have altogether failed and refused, and still do refuse; and the said plaintiffs further in fact say, that the said writing was duly made and payable at the aforesaid town of Louisville, a place within the commonwealth of Kentucky, and subject to laws thereof; and that the same writing, executed without a seal, was, at the time of its execution, and ever has been, and is now, by the laws of the said commonwealth of Kentucky, then and still in force, upon the same footing with a sealed instrument containing like stipulations, entitled to the same consideration in all courts of justice, and having, to all intents and purposes, the same force and effect as it would if sealed. By reason thereof, the plaintiffs are entitled to demand and recover of the said Andrew Donnally, one of the said obligors in the said writing, the aforesaid sum of twelve thousand, eight hundred and seventy-seven dollars, with interest as aforesaid, other parcel of the debt above demanded."

To the fourth and fifth counts, demurrers were filed by the defendant, and there was a joinder in demurrer. The district *court gave judgment if favor of the demurrers. The defendant also pleaded to these [*366 counts, *nil debet* and the statute of limitations of Virginia. The plaintiffs demurred to the plea of the statute of limitations of Virginia, and to the plea of *nil debet* to the fourth count, and joined issue on the plea of *nil debet*.

The statute of limitations of Kentucky, referred to in the fourth and fifth counts, was passed February 4th, 1812, and is as follows:

"An act to amend the law of proceedings in civil cases. Approved, Feb. 4th, 1812.

"§ 8. Be it further enacted by the authority aforesaid, that all writings hereafter executed, without a seal or seals, stipulating for the payment of money or property, or for the performance of any act, duty or duties, shall be placed upon the same footing with sealed writings containing the like stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes having the same force and effect, and upon which the same species of action may be found as if sealed."

The district court held the plea of the statute of limitations of Virginia a bar to all the counts, and gave judgment on all the demurrers, for the defendant, with the general conclusion that the plaintiffs take nothing by their bill, &c. The plaintiffs prosecuted the writ of error.

The case was argued by *Hardin* and *Sergeant*, for the plaintiff in error; and by *Ewing* and *Binney*, for the defendant.

Hardin, for the plaintiff in error, argued, that the whole of the case depended upon the question, can the statute of limitations of Virginia be pleaded to the note sued on, referred to in the fourth and fifth counts. The statute of Virginia only applies to simple-contract debts, and not to debts secured by specialty; and the only question to be decided is—is the writing a specialty or not?

To enable the court correctly to settle this point, further facts in the cause are to be considered. The note was executed at, and made payable
*367] in, Louisville, in the state of *Kentucky. The place where a note is made payable, forms a part of the contract: 4 Litt. 226. A note, not under seal, is made a specialty in Kentucky, 4 Litt. Laws 305; and also by the decisions of the court of appeals of Kentucky: 2 A. K. Marsh. 568, and 3 Ibid. 284. In those cases, it is expressly decided, that, since that statute of Kentucky, a note executed in that state, not under seal, is a specialty, to all intents and purposes. 4 Griffith's Law Register 1135, note. 1. The law of the place where the contract is made, is to form a part of the contract: 2 Bibb 208.

It is admitted, that the *lex fori* is to govern as to the remedy. That the statute of limitations of Virginia is the statute to be pleaded, and not that of Kentucky, is also admitted; but still, it is equally clear, that the statute of Virginia does not apply to a specialty; that the note sued on was a specialty in the state where it was executed and made payable, is certain, because the same is so enacted by the legislature, in 1811, which statute has remained in full force ever since, and was so expounded by the court of appeals of that state. Whatever forms a part of the contract, remains so, and cannot be altered or changed by a mere change of place as to the remedy sought. This principle is frequently illustrated by the incident of interest, which is always regulated by the place where the contract is made and made payable, and not the place where it is attempted to be enforced.

For the *defendant*, it was contended, that the demurrers will be sustained, if the instrument in the declaration is not a specialty. The note is not a specialty in its form, and whatever effect the act of Kentucky may have upon it in that state, it does not operate in the same manner elsewhere. That act does not declare the instrument a specialty; which is a writing obligatory, without a seal. But the plea of *nil debet* is itself an admission that it is not a writing obligatory. *Nil debet* cannot be pleaded to such a writing; the proper plea to a writing obligatory is *non est factum*.

The action is brought in Virginia, and the statute of limitations of that
*368] state, and not that of the state of Kentucky, applies. *In Virginia, it is a simple-contract debt, and it is even so in Kentucky; although, by the law of 1812, in the courts of justice of that state, "it has, to all intents and purposes, the same effect as sealed instruments." It is not made, by this law, a sealed instrument; and when a recovery is sought out of the jurisdiction of the court of Kentucky, the law of the remedy must be the law of the place where the suit has been instituted.

The law of Kentucky addresses itself to the courts of that state only. There, the instrument has all the effects of a specialty, importing consideration, having priority, &c. The cases cited by the counsel of the plaintiffs in error, prove no more, than that the courts of Kentucky follow the law of

that state. These cases can have no influence on the question, whether a court in Virginia is to follow the law of Virginia, or that of Kentucky. Story's Conflict of Laws 219, 222; 3 Johns. 267; 1 Ibid. 140; 2 Mass. 80; 5 Johns. 239; 14 Ibid. 340; 4 Cow. 508; 1 H. Bl. 135; 3 Price 250; 7 Cranch 481; *Jones* v. *Hook*, 2 Rand. 303; 2 Ves. 540.

Sergeant, in reply, urged upon the court the propriety of leaving to the plaintiffs in error their remedy on the note, should a suit be brought upon it in the state of Kentucky, or elsewhere. If the court should consider the limitation law of Virginia as governing the case, they would apply that law, by their judgment, to the remedy which had been sought by this suit in Virginia, and not give such a judgment as would impair the plaintiff's right elsewhere.

Upon the questions in the case, Mr. Sergeant cited, 5 Johns. 239; 3 Gill & Johns. 245; Story's Conflict of Laws 475. He contended, that the sole ground of the cases cited for the defendant, was the effect of the statute of limitations upon the remedy. They do not decide that the right to the debt is destroyed by the lapse of time.

STORY, Justice, delivered the opinion of the court.—This is a writ of error to the district court for the western district of Virginia. The original suit was an action of debt, brought by the Bank *of the United States, upon a promissory note, dated the 26th of June 1822, whereby, sixty [*369 days after date, Campbell, Vaught & Co., as principals, and David Campbell, and Steele, Donnally (the defendant) & Steeles, as sureties, promised to pay, jointly and severally, to the order of the president, directors and company of the Bank of the United States, $12,877, negotiable and payable at the office of discount and deposit of the said bank, at Louisville, Kentucky, value received, with interest thereon, at the rate of six per centum per annum thereafter, if not paid at maturity. The declaration contained five counts, upon the first three of which it is unnecessary to say anything, as the judgment thereon is not now in controversy. The fourth count stated, that the principal and sureties "made their other note in writing," &c., and thereby promised, &c. (following the language of the note), and then proceeded to aver, "that the said note in writing, so as aforesaid made, at, &c., was, and is a writing *without seal*, stipulating for the payment of money; and that the same, by the law of Kentucky entitled an act, &c. (reciting the title and annexing the enacting clause), is placed upon the same footing with sealed writings containing the same stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes having the same force and effect as a writing under seal;" and then concluded, with the usual assignment of the breach, by non-payment of the note. The fifth court differed from the fourth, principally, in alleging that "the principals and sureties, by their certain writing obligatory, duly executed by them *without a seal*, bearing date, &c., and here shown to the court, did promise, &c.;" and contained a like averment with the fourth, of the force and effect of such an instrument, by the laws of Kentucky. The defendant, having a right, according to the laws of Virginia, to plead as many several matters, whether of law or fact, as he should deem necessary for his defence, pleaded *nil debet* to the first three counts of the declaration (on which issue was joined), and the statute of limitations of Virginia to the same counts; to which there was

a special replication, and a demurrer to that replication and joinder in demurrer. To the fourth and fifth counts, the defendant demurred generally, and there was a joinder in demurrer. He *also pleaded to the same counts *370] *nil debet*, and the statute of limitations of Virginia. The plaintiffs demurred to the plea of the statute of limitations to these latter counts, and also to the plea of *nil debet* to the fourth count, and joined issue on the plea of *nil debet* to the fifth count. The court held the plea of the statute of limitations a good bar to all the counts, and accordingly gave judgment upon all the demurrers, in favor of the defendant, with the general conclusion, that the plaintiffs take nothing by their bill. The present writ of error is brought to revise this judgment.

As the contract, upon which the original suit was brought, was made in Kentucky, and is sought to be enforced in the state of Virginia, the decision of the case in favor of the defendant, upon the plea of the statute of limitations, will operate as a bar to a subsequent suit in the same state; but not necessarily as an extinguishment of the contract elsewhere, and especially in Kentucky. But a general judgment in favor of the defendant, upon his demurrer to the declaration (it is supposed) may, as a judgment upon the merits of the claim, have a very different operation, as a *res judicata* or final judgment. Hence, there arises a very important consideration, as to the correctness of the judgment upon that demurrer. It has accordingly been argued at large, by the counsel for the bank, as vital to the rights, as well as to the remedies of the bank in other states. We are of opinion, that the fourth and fifth counts are, upon general demurrer, good; and that the judgment of the court below, as to them, was erroneous. They set out a good and sufficient cause of action, in due form of law; and the averments, that the contract was made in Kentucky, and that, by the laws of that state, it has the force and effect of a sealed instrument, do not vitiate the general structure of those counts, founding a right of action on the note set forth thereon. At most, they are but surplusage; and if they do not add to, they do not impair, the legal liability of the defendant, as asserted in the other parts of those counts.

The other point, growing out of the statute of limitations, pleaded to the fourth and fifth counts (for as to the first three counts it is conceded to be a good bar), involves questions of a very different character, as to the operation and effect of a conflict of laws in cases governed by the *lex loci*. The statute of *limitations of Virginia provides, that "all actions of debt, *371] grounded upon any lending or contract without specialty," shall be commenced and sued within five years next after the cause of such action or suit, and not after. This being the language of the act, and confessedly governing the remedy in the courts of Virginia, the bar of five years must apply to all cases of contract, which are without specialty, or, in other words, are not founded on some instrument acknowledged as a specialty by the law of that state. The common law being adopted in Virginia, and the word "specialty" being a term of art of that law, we are led to the consideration, whether the present note is deemed, in the common law, to be a specialty. And certainly it is not so deemed. It is not a sealed contract, nor does it fall under any other description of instruments or contracts or acts known in the common law as specialties. The argument does not deny this conclusion; but it endeavors to escape from its force, by affirming, that

the note is a specialty according to the laws of Kentucky; and if so, that this constitutes a part of its nature and obligation; and it ought, everywhere else, upon principles of international jurisprudence, to be deemed of the like validity and effect.

The act of Kentucky of the 4th of February 1812, provides, "that all writings hereafter executed, without a seal or seals, stipulating for the payment of money or property, or for the performance of any act, duty or duties, shall be placed upon the same footing with sealed writings containing the like stipulations, receiving the same consideration in all courts of justice, and to all intents and purposes, having the same force and effect, and upon which the same species of action may be founded, as if sealed." Now, it is observable, that this statute does not, in terms, declare, that such writings shall be deemed specialties; nor does it say, that they shall be deemed sealed instruments. All that it affirms is, that they shall be put upon the same footing as sealed instruments, and have the same consideration, force, effect and remedy as sealed instruments. So that it is perfectly consistent with the whole scope and object of the act, to give them the same dignity and obligation as specialties, without intending to make them such. A state legislature may certainly provide, that the same remedy shall be had on a promissory note, as on a bond or sealed *instrument; but it will not thereby make the note a bond or sealed instrument. It may [*372 declare, that its obligation and force shall be the same as if it were sealed; but that will still leave it an unsealed contract.(a)

But whatever may be the legislation of a state, as to the obligation or remedy on contracts, its acts can have no binding authority beyond its own territorial jurisdiction. Whatever authority they have in other states, depends upon principles of international comity, and a sense of justice. The general principle adopted by civilized nations is, that the nature, validity and interpretation of contracts, are to be governed by the law of the country where the contracts are made, or are to be performed; but the remedies are to be governed by the laws of the country where the suit is brought; or, as it is compendiously expressed, by the *lex fori*. No one will pretend, that because an action of covenant will lie in Kentucky, on an unsealed contract made in that state, therefore, a like action will lie in another state, where covenant can be brought only on a contract under seal. It is an appropriate part of the remedy, which every state prescribes to its own tribunals, in the same manner in which it prescribes the times within which all suits must be brought. The nature, validity and interpretation of the contract may be admitted to be the same in both states; but the mode by which the remedy is to be pursued, and the time within which it is to be brought, may essentially differ. The remedy, in Virginia, must be sought within the time, and in the mode, and according to the descriptive character of the instrument, known to the laws of Virginia, and not by the description and character of it, prescribed in another state. An instrument may be negotiable in one state, which may be incapable of negotiability by the laws of another state; and the remedy must be in the courts of the latter, on such instrument, according to its own laws.

(a) See 4 Griffith's Law Register 1136, note; cases in Kentucky on this point, 1 A. K. Marsh. 507.

If, then, it were admitted, that the promissory note now in controversy were a specialty, by the laws of Kentucky, still it would not help the case, unless it were also a specialty, and recognized as such, by the laws of Virginia; for the laws of the *latter must govern as to the limitation of suits in its own courts, and as to the interpretation of the meaning of the words used in its own statutes.

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It may be added, that neither the fourth count, nor the fifth count of this declaration, aver the note to be a specialty; nor does either assert it to be a sealed writing; but the contrary. So that the court are called upon to make an intendment as to the operation of a foreign law, which, if essential to the case, should have been directly stated, and not left to mere inference.

The case, however, is not without authority, even if it were not clear upon principle. In *Warren* v. *Lynch*, 5 Johns. 239, where a promissory note was made in Virginia, payable in New York, and the maker signed it with a scroll, which, in Virginia, is deemed to be a seal; on a suit in New York, it was held to be an unsealed instrument (the laws of New York recognising no instrument as sealed, unless such as are with a wax or wafer seal), and therefore, that the proper form of action was *assumpsit*, and not debt. In *Andrews* v. *Herriot*, 4 Cow. 508, it was held, that an action of covenant will not lie in New York, on a contract to be performed in Pennsylvania, where there was a scroll instead of a seal, in the *locus sigilli*; although, by the law of Pennsylvania, a scroll is deemed a seal. In *Trasher* v. *Everhart*, 3 Gill & Johns. 234, it was held, that in case of a single bill made in Virginia (where it is not deemed a specialty), sued in Maryland, an action of *assumpsit* is not maintainable as upon a simple contract, but must be debt; because, in Maryland, such single bill is deemed a specialty. The doctrine of these cases seems directly in point; and a very close analogy may be found in the case of *Jones* v. *Hook's Administrator*, 2 Rand. 303, where the court of appeals of Virginia held, in an action of debt, upon a judgment of North Carolina, brought in Virginia, that the statute of limitations of North Carolina was no bar, but that of Virginia, if applicable, governed the remedy.

Upon the whole, our opinion is, that the judgment upon the demurrer by the defendant, to the fourth and fifth counts, ought to be reversed; and that in all other respects, it ought to be affirmed. But as the plea of the statute of limitations is a good bar to all the counts, the judgment of the court below, that *the plaintiffs take nothing by their writ, is right, and ought to be affirmed, with costs.

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This cause came on to be heard, on the transcript of the record from the district court of the United States for the western district of Virginia, and was argued by counsel: On consideration whereof, it is considered by the court here, that the judgment of the district court of the western district of Virginia is erroneous in this, that upon the demurrer of the said Donnally, to the said fourth and fifth counts in the said declaration, the judgment ought not to have been as is set forth in the record, but ought to have been, that the fourth and fifth counts aforesaid are good and sufficient in law, to have and maintain the action aforesaid, of the plaintiffs aforesaid, for the matters contained therein; and it is further considered by the court here,

that the special pleas pleaded by the said Donnally, of the statute of limitations, to the first, second and third counts of the said declaration, are good and sufficient in law, to preclude the said plaintiffs from having and maintaining their action aforesaid thereon, notwithstanding the matters set up by the said plaintiffs, in their replication to the said special pleas; and it is further considered by the court here, that the special pleas pleaded by the said Donnally, to the said fourth and fifth counts of the declaration aforesaid, of the statute of limitations, and also of *nil debet*, to the said fifth count, are good and sufficient in law, to preclude the said plaintiffs from having and maintaining their action aforesaid, against the said Donnally. And therefore, inasmuch as it appears to the court here, that, upon the whole record, the pleas aforesaid, so as aforesaid pleaded by the said Donnally, and adjudged in his favor are, in law, a good and sufficient bar to the action aforesaid, upon all the counts contained in the declaration aforesaid, notwithstanding the fourth and fifth counts thereof are otherwise good and sufficient in law; it is, therefore, considered by the court here, that the judgment aforesaid of the district court of the western district of Virginia, that the said plaintiffs take nothing by their bill aforesaid, be and the same is hereby, for this cause, affirmed, with costs.

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*United States, Plaintiffs in error, *v.* Walter Jones, Administrator of Benjamin G. Orr. [*375

Treasury transcripts.

A treasury transcript, produced in evidence by the United States in an action on a bond for the performance of a contract for the supply of rations to the troops of the United States, contained items of charge which were not objected to by the defendant; the defendant objected to the following items, as not proved by the transcript: "February 19th, 1818, for warrant 1860, favor of Richard Smith, dated 27th December 1817, and 11th February 1818, $20,000"; and on the 11th of April of the same year, another charge was made "for warrant No. 1904, for the payment of his two drafts, favor of Alexander McCormick, dated 11th and 17th of March 1818, for $10,000;" and on the 14th of May of the same year, a charge was made "for warrant No. 2038, being in part for a bill of exchange in favor of Richard Smith for $20,000—$12,832.78;" and one other warrant was charged June 22d, "for a bill of exchange in favor of Richard Smith, dated June 22d, 1810, $4000; and also a warrant to Richard Smith, per order, for $8000." These items, the circuit court instructed the jury, were not sufficiently proved, by being charged in the account and certified under the act of congress.

The officers of the treasury may well certify facts which come under their official notice, but they cannot certify those which do not come within their own knowledge; the execution of bills of exchange and orders for money on the treasury, though they may be "connected with the settlement of an account," cannot be officially known to the accounting officers. In such cases, however, provision has been made by law, by which such instruments are made evidence, without proof of the handwriting of the drawer; the act of congress of the 3d of March 1797, makes all copies of papers relating to the settlement of accounts at the treasury, properly certified, when produced in court, annexed to the transcript, of equal validity with originals. Under this provision, had copies of the bills of exchange and orders, on which these items were paid to Smith and McCormick, been duly certified and annexed to the transcript, the same effect must have been given to them by the circuit court, as if the original had been produced and proved. Every transcript of accounts from the treasury, which contains items of payments made to others, on the authority of the person charged, should have annexed to it a duly certified copy of the instrument which authorized such payments; and so, in every case, where the government endeavors, by suit, to hold an individual liable for acts of his agent; the agency, on which the act of the government was founded, should be made to appear by a duly certified copy of the power. The defendant would be at liberty to impeach the evidence thus certified; and