thereupon had, as well in opposition to, as in support of, the motion: it is now here ordered and adjudged by this court, that the *mandamus* prayed for be and the same is hereby refused, and that the said motion be and the same is hereby overruled.

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*Charlotte Dye Owings and Frances T. D. Owings, Plaintiffs in error, *v.* James F. Hull. [*607

Evidence.—Judicial notice.—Presumption.—Agency.—Ratification.

Mrs. C. D. Van Pradelles, being in New Orleans, and about to sail for Baltimore, made her last will and testament, and appointed her sisters, residing in Baltimore, executrices of her will; at the time of her decease, she had real and personal estate, including some slaves, in New Orleans, and she left a number of children; she sailed from New Orleans, and was never heard of, after she left that place. The executrices, after some time, supposing her dead, proved the will in Baltimore; and in 1816, gave a power of attorney to John K. West, of New Orleans, to receive all the moneys due the estate of their testatrix, and particularly, to cause such proceedings to be instituted, as might be necessary to effect a sale of the estate, and to give a deed for the same, and generally to perform all acts in the premises, judicially and extra-judicially, for the effectual settlement of the estate, &c.; West obtained letters testamentary from the court of probate, in New Orleans, authorizing him to collect the estate, and to do all lawful acts as attorney in fact of the executrices; he sold the slaves belonging to the estate, to Mr. Hull, in February 1817, for $1800, by a bill of sale executed before a notary; and all the purchase-money, except $450 paid to one of the children of the testatrix, was paid to him; and he, soon after, failed, without having paid over any part of the proceeds of the sale to the executrices; this sale was communicated to Mr. Winchester, the attorney of the executrices, and by him to them. In 1826, a suit was brought in the parish court of New Orleans, by the children and heirs of Mrs. Van Pradelles, against Hull, according to the laws of Louisiana, for the delivery and possession of the slaves so sold; in which suit, carried afterwards to the supreme court of the state, the slave swere decreed to the plaintiffs, upon the ground, that the sale was absolutely void, under the laws of Louisiana; as executrices can only sell, after an order of court, and by auction; and in this case, the requisites of the law were not complied with. Hull brought this suit in the circuit court, against the executrices, to recover from them the purchase-money paid for the slaves, and his expenses attending the same; the whole proceedings in the Louisiana suit, and the evidence in the same, were read to the jury by agreement, subject to all legal exceptions.

The defendants excepted to the reading in evidence of the record in the case of the Heirs of C. D. Van Pradelles *v.* Hull, as not evidence in the present suit, except as to the judgment; that is, the pleadings and proceedings on which the judgment was founded, and to which, as matter of record, it necessarily refers. This objection was well taken; the suit was *res inter alios acta;* and the proceedings and judgment thereon, were no further evidence, than to show a recovery against Hull by a paramount title.

A copy of the bill of sale of the slaves, from West to Hull, on record in the notary's office in New Orleans, was offered in evidence; no evidence to account for the non-production of the original, was offered by the plaintiff; but, by the laws of Louisiana, copies of such notarial acts are evidence, the *original always remaining, by the law of Louisiana, in the office of the notary: *Held*, that the circuit court was bound to take judicial notice of the laws of Louisiana; and that the copy being evidence by those laws, was evidence in this case. [*608

The circuit courts of the United States are created by congress, not for the purpose of administering the local law of a single state alone, but to administer the laws or all the states in the Union, in cases to which they respectively apply; the judicial power conferred on the general government, by the constitution, extends to many cases, arising under the different states; and this court is called upon, in the exercise of its appellate jurisdiction, constantly to take notice of and administer the jurisprudence of all the states. That jurisprudence is, then, in no just sense, a foreign jurisprudence, to be proved in the courts of the United States, by the ordinary modes of proof by which the laws of a foreign country are to be established; but it is to be judi-

cially taken notice of in the same, as the laws of the United States are taken notice of in those courts.[1]

A copy of the letters-testamentary, granted by the parish court of New Orleans, was proved by the oath of the clerk and register of the court of probates, to be a true copy of the original, and that he could not send the original, which was on file in the court of probates. This is the best evidence which the nature of the case admits of.

The letters and accounts of J. K. West, the attorney in fact of the executrices, transmitted, by him to Mr. Winchester, their attorney in fact, were legal evidence in the circuit court.

In order to recover against the executrices, on this point, the plaintiff should have proved, that the sale of the slaves made to him by West, was in conformity with the laws of the state of Louisiana, and, subsequently to such a sale, a recovery of the slaves from him. Every authority given to an agent or attorney to transact business for his principal, must, in the absence of any counter-proof, be construed to be, to transact it according to the laws of the place where it is to be done; a sale of slaves, authorized to be made, in Louisiana, by an executrix, must be presumed to be intended to be done in the manner required by the laws of that state to give it validity; and the purchaser, equally with the seller, is bound, under these circumstances, to know what the laws are, and to be governed thereby; the law will never presume that parties intend to violate its precepts.

This is not the case of a general agency created by persons acting *en autre droit*. The purchaser was, therefore, bound to see whether the agent acted within the scope of his powers; and at all events, he was bound to know that the agent could not, in virtue of any general power, do any act which was not in confirmity with the laws of Louisiana; the principals could never be presumed to authorize him to violate those laws, and the purchaser, purchasing a title, invalid by those laws, must have purchased it with full knowledge.

A ratification of the unauthorized acts of an attorney in fact, without a full knowledge of all the facts connected with those acts, is not binding on the principals; no doctrine is better settled, on principle and authority, than this—that the ratification of the act of an agent, previously unauthorized, must, in order to bind the principal, be with a full knowledge of all the material facts; if the material facts be either suppressed or unknown, the ratification is invalid, because founded on mistake or fraud.

*609] *Error to the Circuit Court of Maryland. The facts of the case, as stated in the opinion of the court, were:

"The original suit is an action of *assumpsit*, brought by the defendant in error against the plaintiffs in error (the original defendants); the declaration containing the money counts, an *insimul computassent*, and a special count, as for a deceit in the title upon a sale of certain slaves. Upon the trial, under the general issue, the facts appeared as follows: Mrs. Van Pradelles, a sister of the plaintiffs in error, being at New Orleans, in July 1813, made her will, describing herself to be of Baltimore county, in the state of Maryland, and thereby bequeathed all her estate, equally, among her children named in the will, and appointed the plaintiffs in error, executrices of her will. She immediately after sailed from New Orleans, bound, as is supposed, for Baltimore; and has never since been heard of. In May 1815, the plaintiffs proved the will in the orphans' court of Baltimore county, and took administration of the estate. The property of Mrs. Van Pradelles, at New Orleans, consisted of real and personal estate, and, among other things, of some slaves; and in January 1816, the executrices gave a power of attorney to John K. West, of New Orleans, to receive and give receipts,

[1] That the courts of the United States will take judicial notice of the laws of the several states, is abundantly settled by authority. Pennington *v.* Gibson, 16 How. 65; Griffing *v.* Gibb, 2 Black 519; Cheever *v.* Wilson, 9 Wall. 108; Junction Railroad Co. *v.* Bank of Ashland, Id. 226, and numerous decisions in the various circuit courts. So also, the state courts will take judicial notice of the laws of a sister state, wherever the proceedings are reviewable by the supreme court of the United States. Ohio *v.* Hinchman, 27 Penn. St. 479.

&c., for all the goods, &c., belonging to the estate, to receive all sums of money, &c., and particularly, 'to cause such proceedings to be instituted as may be necessary to effect a sale of the whole real and personal estate of which C. D. Van Pradelles, the testatrix, was seised or possessed, at the time of her death, and to execute, &c., a good and sufficient deed, &c., in the name of the executrices, for the purpose of transferring all the right and title of the heirs of the testatrix, therein or thereto, to the purchaser of said estate; and generally, to do, negotiate and perform all other acts, matters and things in the premises, that circumstances may require, as well judicially as extra-judicially, for the effectual settlement of the estate, &c.' West, in January 1817, obtained from the court of probates of the parish of New Orleans, letters-testamentary, authorizing him to collect the goods and effects of the testatrix, and to make a just inventory thereof, and to do all other lawful acts, as attorney in fact of *the executrices. In February 1817, West sold the slaves in question, belonging to the estate, to [*610 the defendant in error, for $1800, by a bill of sale, duly executed before a notary in New Orleans; $1350, part of the consideration-money, was duly paid to West, who afterwards failed, in 1819; but it did not appear in the evidence, that any part of the money had ever come to the hands of the executrices; $450 were, after the failure of West, received by Mrs. Donaldson, one of the children and devisees of Mrs. Van Pradelles. The sale was communicated to Mr. Winchester, the attorney of the executrices, and by him to the latter; and the correspondence between Winchester and West was stated in the record. In 1826, a suit was brought in the parish court of New Orleans, by the heirs of the testatrix, against Hull, according to the laws of Louisiana, for the delivery and possession of the slaves so sold, and their offspring; upon which, such proceedings were had, that a recovery was decreed to the plaintiffs in that suit, by the supreme court of the state, upon the ground, that the sale of the slaves was absolutely void, because, by the laws of Louisiana, executrices can only sell, after an order of court, and by public auction, and not by private sale; and that here there was no order of court, nor sale at auction, but a sale by private contract."

The plaintiff, to support the issue on his part, offered in evidence the record of the proceedings in the parish court of the city of New Orleans, in the case in which the children and heirs of Mrs. Van Pradelles were petitioners, against James F. Hull, for the recovery of the slaves sold to him by John K. West; which proceedings were certified according to the provisions of the act of congress. This record contained a duly-certified notarial copy of the act of sale of the slaves, dated 27th of August 1817, by John K. West, attorney in fact of the executrices of Mrs. Van Pradelles, to James F. Hull. The original, of which this was a copy, was the notarial register of the sale, recorded by the notary, and in his possession, according to the laws of Louisiana.

The record also contained certain depositions, taken and used as evidence in the cause; and documentary proof, such as the letters of J. K. West to J. F. Hull; J. F. Hull to J. K. West; letters from G. Winchester, the counsel of the *executrices of Mrs. Van Pradelles, and afterwards [*611 their attorney in fact, to J. K. West, on the subject of the estate of the testatrix; powers of attorney from the executrices to J. K. West, and Mr. Winchester; a copy of the petition of J. K. West, to the court of pro-

bates of New Orleans, for letters of executorship, and the order of the court thereon, and the letters-testamentary granted on the said petition; the accounts of J. K. West, with the executrices; the correspondence of Mr. Winchester with Morgan, Dorsey & Co., on the affairs of West, after his failure; and the proceedings of the supreme court of Louisiana, on the appeal of J. F. Hull from the parish court.

The plaintiff in the circuit court also gave in evidence, a commission issued to New Orleans and executed there, containing the examination of Martin Blache, register of wills in and for the parish of New Orleans, and *ex officio* clerk of the court of probates; with a copy of the original power of attorney to John K. West from the executrices, deposited in the court of probates; under which power of attorney, John K. West had acted in the premises. The defendants objected to their admissibility, and presented the following objections, which were overruled by the court. 1. That the record in the case of *Donaldson* v. *Hull*, in the parish court of New Orleans, is not evidence in this cause against the defendants, except as to the judgment of the court in Louisiana. 2. The copy of the original bill of sale, on record in the notary's office, is not evidence, unless the plaintiff accounts for the non-production of the original. 3. That to make the act of sale evidence, it must appear, by the laws of Louisiana, properly and legally proven, that the original act of sale, of which it purports to be a copy, is in the custody of a public depository, and cannot be adduced in evidence. 4. The depositions and documentary proof contained in the record, in the cause of *Donaldson* v. *Hull*, are not evidence against the defendants in this cause. 5. That the papers referred to in the testimony of Martin Blache, purporting to be letters-testamentary granted by the court of probates to John K. West, are not legal evidence in this case against the defendants. *6. *612] The evidence of Mr. Winchester, with regard to the letters, and the account of Mr. West, transmitted by him, are not admissible in evidence.

And the defendants by their counsel, offered the following prayers: 1. The defendants, by their counsel, prayed the court to direct the jury, that there is no evidence in the cause to show that John K. West had any authority from the defendants in this cause, to effect a sale of any property belonging to the estate of their testatrix in Louisiana, except in conformity with the laws of said state; and that, unless the plaintiff shows a sale to the plaintiff Hull, by West, in conformity with those laws, and a subsequent recovery from Hull, he is not entitled to recover. 2. The defendants, by their counsel, prayed the court to direct the jury, that unless they believe that John K. West strictly complied with the special instructions given him by the defendants, in the power of attorney of January 30th, 1816, and caused such legal proceedings to be instituted as were necessary to effect a sale of the personal estate of which their testatrix died possessed in Louisiana, and, under such legal proceedings, made sale of certain slaves, being part of the said personal estate, to J. F. Hull, the plaintiff in this cause, and the said slaves were subsequently recovered from the said Hull, that the plaintiff is not entitled to recover.

Thereupon, the plaintiff's counsel, on their part, contended and insisted, that the commission and the return referred to were legal and competent evidence, to prove a recovery of the slaves from the plaintiff, by due course of law, for a defect of title in the defendants, and John K. West, their

agent and attorney, and of the plaintiff, who claimed under the said defendants and their said agent as aforesaid. And also moved the following prayers to the court: 1. The acts of John K. West, relative to the sale of certain slaves to the plaintiff in this case, in Louisiana, which were made known to the defendants, and were assented to, and acquiesced in by them, are binding upon the defendants, as West's principals, whether those acts did or did not conform to a letter of attorney previously given by the defendants to West. 2. The accounts furnished by John K. West to the defendants, *and retained by them, and no item objected to therein, except the charge of five per cent. commissions, are proper and legal [*613
evidence of the nature and particulars of the transactions between West and the defendants, so far as these transactions are therein detailed, except as to the charge for commissions. 3. The letters of George Winchester, written by the direction and with the approbation of the defendants, to West, and to Morgan, Dorsey & Co., and by them respectively received, and the instructions given to Winchester by the defendants, and by him communicated to West, are proper and legal evidence in this case.

And thereupon, the circuit court gave the following opinion: "The action in this case was brought to recover a sum of money, paid by the plaintiff, for certain slaves purchased by him of John K. West, attorney of the defendants, as executors of Mrs. Van Pradelles, a sister. This sale was declared void by the supreme court of the state of Louisiana, where the sale was made, for reasons stated in the opinion of the court; that the sale was made without an order of court, and was not made at public auction. The counsel for the defendants contend, that, as the sale was not made according to the laws of Louisiana, and was adjudged to be void by the court of that state, the proceedings of the attorney were void for that reason; and that West, being a special agent, did not pursue the instructions of his constituents, but acted contrary to them. The counsel for the plaintiff insists, that the instructions of the defendants to their attorney were pursued; and that, whether they were special or general, they were ratified by the defendants, and therefore, binding on them; and that the plaintiff in this suit is entitled to recover the money paid by him for the slaves thus sold. Whether an agent has a general, or only a special authority, is properly matter of evidence, for the consideration of a jury. If an agent exceeds his authority, or if he acts without authority, if the employer subsequently acquiesces in, or approves his conduct, he is bound by it; and a small matter will be evidence of such assent. And if, with a knowledge of all the circumstances, an employer adopts the acts of his agent, *for a moment, he is bound by [*614
them. But the great principle in this cause, is this—that where one of two innocent persons must suffer, by the fraud or act of a third, he who enabled that person, by giving him credit, to commit the fraud, or to do the act, ought to be the sufferer. In this case, it does not appear by the evidence given, that West, the attorney, had or had not taken letters of administration on the estate of Mrs. Van Pradelles. The fact is not noticed in the opinion of the court. The court of Louisiana declare the sale void, because made without an order of the court, and not at public auction. We know, that in Maryland, after letters are granted, the executor or administrator, in many cases, cannot sell slaves, without an order of court. This court will not presume that letters of administration were granted to the

attorney; much less will they presume that they were not granted. The course of proceeding in the courts of Louisiana, is according to the principles of the civil law; in our state, it is different. With these indications of the opinion of the court, the jury are instructed, that if they believe, from the evidence, that the acts of John K. West, the attorney of the defendants, were made known to them, and were assented to and acquiesced in, they are binding upon them, whether the acts did or did not conform strictly to the letter of attorney previously given by them to West. This opinion of the court is deemed a sufficient answer to all the prayers made by counsel for plaintiff and defendants." To this opinion of the court on the said prayers, and the refusal of the court to sustain the objections so made by the defendants' counsel, exceptions were taken.

The defendants, by their counsel, objected to the admissibility in evidence of the record from the parish court, in and for the parish and city of New Orleans, in the state of Louisiana, annexed to the commission, for any purpose, on the ground of its not being authenticated according to law; but the court overruled this objection. The defendants' counsel excepted.

And the defendants further prayed the direction of the court to the jury, that if they should be of opinion, from the evidence, that the defendants did ratify the said sale of said *negroes, yet if they should be of opinion, that West did not, before such ratification, apprise the defendants of the fact that letters of administration were never taken out by him in Louisiana, upon the estate of Mrs. Van Pradelles; and of the fact that, by the laws of Louisiana, the executrices, the defendants, never could have claimed any property in the said negroes so sold; and that the defendants, in ignorance of the existence of these facts, did ratify said sale; then, such ratification being made without a full knowledge of all circumstances material for them to know, before they made such ratification, is not binding upon them. The court said: "This prayer not arising from the facts of the case, the court refuse to grant it. But the court are of opinion, that if the jury should believe from the evidence, that the proceedings of their attorney were ratified by them, it is not material, whether they knew or did not know, that West had not taken out letters of administration on the estate of the testatrix." To which opinion, and to the refusal of the court to grant said prayer, the defendants, by their counsel, excepted.

*615]

The defendants prosecuted this writ of error.

The case was argued by *Johnson*, for the plaintiffs in error; and by *Williams*, for the defendant.

Johnson contended, that the circuit court erred: 1. In overruling the objections made by the defendants below to the written evidence offered by the plaintiff. 2. In refusing the instructions asked by the defendants' counsel. 3. In giving the instructions which were given to the jury.

After a particular reference to the matters contained in the record of the proceedings of the court of Louisiana, Mr. Johnson insisted, that the contents thereof could not be evidence in this case. The defendants below were not parties to it; they had no notice from the plaintiff that the proceeding was instituted, and that they would be affected by the result. If they knew of the suit, it was not by such a knowledge of it, that they became parties to it, or could be bound by it. Nor does it appear, that a notice of the suit,

and of claims upon the attorney of the defendant in the suit, *by Mr. Hull, was given to him, with a view to the ultimate responsibility of his constituents. Although such a notice would not have had any legal effect, yet its absence makes the claim to introduce the record in the circuit court still less entitled to consideration, and entirely denuded. West was the special agent of the plaintiffs in error; his powers were created, and their purposes declared, in the letter of attorney which was sent to him. That power was filed in the office of the clerk of the probate court of New Orleans, and could and ought to have been seen by Mr. Hull. As it gave no authority from the executrices to proceed, but under and in conformity with the laws of Louisiana in reference to the estate of the testatrix; so it gave no power to him to appear for them in actions for a neglect or breach of those laws by him, or to bind them by a mis-execution of the power, or to answer the consequences of such abuse of it. The acts of West were, then, so far as they could affect the plaintiffs, as those of an entire stranger to them; and the record of the proceedings which was admitted in the circuit court, had no other principle of law to sustain its admission, than would support a claim to the introduction, as evidence, of the record of the proceedings in a suit between any other parties, and in any other court or country. As a judgment of the parish court, and of the supreme court, by which Mr. Hull was deprived of the slaves he obtained from West, the record might have been admitted in evidence, but nothing more. Not a portion of the other parts of it were legally in the case. The testimony taken in one trial between parties, is not evidence in a succeeding trial between the same parties, much less is it evidence between other parties. It is *res inter alios acta.*

The authentication of the act of sale, accompanied with the testimony of the clerk of the court of probates, was not sufficient. The original should have been produced; or it should have been proved, that it could not be produced, and must remain with the notary, upon some rule or principle proved to the court. Nor could it be evidence, if the original had been offered. It was an act done by West, out of, and unauthorized by, the power of attorney which he held. It was not an act within the scope of his authority, but was a plain violation of it.

*Nor can the introduction of this evidence be sustained, on the ground, that the acts of West were adopted by the plaintiffs' in error. [*617 Before this could be, it should have been shown, and it was not shown, that they had full knowledge of all those acts, and of every circumstance connected with them. If it had been proved, that the plaintiff in error knew that in the execution of the power under which West acted, he had violated, instead of conforming to, the laws of Louisiana; that the act of sale was not such as was permitted by those laws, and that, in reference to slaves so situated, a sale could only be made by auction; and with this, and a full knowledge of every other fact, they had ratified and adopted all that had been done, the case might have stood differently.

The ruling of the court, that the defendants in the circuit court were bound by the acts of West, was contrary to the established principles of law. They did not know them; they received no part of the money produced by them; they were done without authority. Cited, 5 Johns. 58–9; Cro. Jac.

468; 1 Pet. 246; 3 Ibid. 69, 81; 7 Wheat. 290; Paley on Agency 164, 169; 2 Kent's Com. 278.

Williams, for the defendant.—Had West authority to sell the slaves, part of the estate of Mrs. Van Pradelles? This authority is shown by the letter of attorney; by the correspondence of Mr. Winchester; by his accounts furnished to the executrices, his constituents: all of which testimony is independent of the record of the proceeding in the courts in New Orleans. That he sold the slaves, is also proved by evidence out of that record; by his correspondence; by the act before the notary; by his accounts; and by the correspondence of Mr. Winchester with Morgan, Dorsey & Co.

Has there been a recovery of the slaves from Mr. Hull, by parties having a title superior to the vendors? This is established by the record from New Orleans. The parish court appears to put the right of recovery upon the ground that, as Mrs. Van Pradelles was presumed to be alive, and her children were entitled to be in provisional possession of her property, the slaves could not be rightfully sold. The supreme court, while they seem *618] to imply, that no valid *sale could be made of the property, appear to place the right to recover it, on the ground, "that the sale was made without an order of court, and not by public auction." This, however, is manifest, that neither the defendants, nor their agent, did convey a valid title to the property to Mr. Hull; either, because a good one could not be made by them; or, because the agent did not accompany his sale with the proper formalities. So that the vendors, or their agent, have received the vendee's money, without a valuable consideration in exchange. A vendor is always held, in sales of personal property, impliedly to warrant the title. 2 Kent's Com. 478, and the authorities there cited; *Flotte* v. *Aubert*, 2 Orleans T. Rep. 329; 2 Bl. Com. 451; 3 Ibid. 166. Here, the act of sale before the notary-public contains an express warranty of title.

To the objections urged by the defendants to the evidence offered by the plaintiff, it is answered—1. The record from New Orleans is only relied on to establish a recovery of the slaves from the vendee, for defect of title in him, and consequently, in those from whom he purchased. 2. The original act of sale is shown to be a part of the records of a public officer—a sworn copy is, therefore, the best evidence which can be afforded or required. 7 Pet. 85. 3. This court will take notice, officially, that notaries-public in Louisiana, not a foreign country, are public officers, without further evidence. 2 W. C. C. 449. 4. The depositions and documentary proofs included in the record, are not insisted on, as evidence for the plaintiff; nor are they requisite for him, in order to maintain this action. 5. The letters-testamentary, or authority granted to West, are proved by Blache's testimony. This proof, however, is not essential for the plaintiff's case, as his authority is otherwise sufficiently established. 6. Mr. Winchester's letters are most clearly competent and legal evidence; he proves his appointment as agent and attorney of the defendants, and his authority to write the letters referred to. Of course, his acknowledgment of the receipt of West's accounts affects them with his knowledge and acts.

*619] As to the first exception of the defendant in the circuit court. 1. To the assumption on the part of the defendants, that *there is

no evidence to show that West had any authority to make sales of the property of their testatrix, except in conformity with the laws of Louisiana are opposed the instructions of their counsel, Mr. Winchester, in his letter to West, of the 13th of November 1816, wherein, after giving specific directions to sell the several descriptions of property, and especially, that the negroes were to be sold on a credit of three and six months, he adds: "but it is the wish of the Misses Owings, that you should consider yourself at liberty to exercise your own discretion, as you may think best, under existing circumstances; and whenever you may think it most conducive to the interest of those concerned, to deviate from the above instructions." And in Mr. Winchester's letter to West, of the 14th of July 1817, wherein he acknowledges the receipt of the copies of the correspondence between West and Hull, relative to the sale of the slaves in question, he adds, "the executrices are satisfied with all you have done towards a settlement of the estate; and relying confidently on your friendly exertions in their behalf, have only to add, generally, that whatever, under existing circumstances, may seem best in your judgment to be done with the estate, either real or personal, or with any part of it, they will approve and sanction." In these letters, it will be perceived, there is no reference to the laws of Louisiana, as furnishing guides to regulate the sales by West. 2. It is manifest, by the act of sale, that West supposed himself to be acting within the terms of, and according to his instructions, as contained in the letter of attorney to him, of the 30th of January 1816. And it is no fault on the part of the plaintiff, if West did not conform himself to his instructions. He was the agent of the defendants, and not of the plaintiff. But whether he did, or did not, so conform himself, in the sale of the slaves; everything which he did do in regard to that sale, was known and acquiesced in, and ratified by the defendants. Such knowledge and ratification are proved by Mr. Winchester's letters and testimony.

As to the second exception. Neither in the court below, nor in the points filed by the plaintiffs in error, is the defect in the authentication of the record pointed out. It will be observed, that it does not purport to be a record of the supreme court, but of the parish court *for the parish and city of New Orleans. And all the legal formalities, required by the act [*620 of the 26th of May 1790, appear to be complied with. Moreover, the transcript of the record offered in evidence by the plaintiff, is a part of the testimony taken under the first commission; and it is proved by the witnesses, examined under that commission, to be a true copy of those legal proceedings. 2 Cranch 238.

The third exception of the defendants below. There are no facts in the case whereon to found this exception. 1. It would seem, that the proper authority was taken out by West, to enable him to act as the attorney of the defendants. 2. The want of title in the defendants in the property, which they authorized and directed West to sell, was a matter of law which they were bound to know, and not a question of fact. 3. It does not appear, from the evidence, that the defendants were ignorant of any circumstances material for them to know, in this transaction. 4. If the attorney and agent of the defendants had been guilty of any fraud or neglect towards them, but in which the plaintiff had no participation, they must suffer the consequences, and not an innocent third party. 5. The ignorance of a vendor,

that his title to personal property sold by him is defective, affords no defence against the vendee's action upon an implied, or upon express, warranty of title. 6. The consequences are the same to a vendee, whether the vendor knew, or did not know, of his defect of title. The former has parted with his money, without any equivalent; and the vendor's ignorance in this respect cannot entitle him to retain money, without consideration.

On the points submitted by the plaintiffs in error, Mr. Williams argued: That the record from New Orleans was legal and competent evidence to prove the recovery of the slaves by a paramount title. The record is relied on for this purpose only; and if such judicial recovery is not the only legal evidence to establish such a fact, it is clearly the most proper and conclusive evidence. To the demand for a restoration of the slaves, the purchaser *621] drives the party claiming to a suit, and the defendants have *notice of its pendency; their agent and attorney at New Orleans is a witness in the cause; it is decided against the purchaser; he prosecutes an appeal to the supreme court; and the restoration is only submitted to, under the mandate of tribunals whose commands were irresistible. Authorities can scarcely be required to justify such conduct, and to maintain the right to recover under such circumstances. Cited, *Fenwick* v. *Forrest*, 5 Har. & Johns. 414–15; 6 Ibid. 415–16; *Dimond* v. *Billingslea*, 2 Har. & Gill 264; *Clarke* v. *Carrington*, 7 Cranch 308, 322; 1 Johns. 517; 13 Ibid. 224. Notice to the agent is notice to the principal; 2 Saund. Plead. and Evid. 736.

On the prayers of the plaintiff below, in the defendants' first exception, it was contended: 1. The acts of West, known and assented to by his principals, are binding upon them; whether those acts did or did not conform to the previous letter of attorney. Cited, 1 Esp. 112, and authorities; 4 Ibid. 114; 1 Saund. Plead. and Evid. 53, Admissions; 2 Ibid. 734, 736, and authorities; Paley's Agency 143, 249, 162–3; Long on Sales 224; 2 T. R. 189 n.; 4 Bing. 722; 2 H. Bl. 618; *Cairnes* v. *Bleecker*, 12 Johns. 300; 13 Ibid. 367; 13 Petersd. 723–4, Authorities, 744; 9 Cranch 153, 159; Pet. C. C. 64, 72. Liabilities of agents to principals discharged, by acquiescence in their acts. 1 Johns. 110; 2 Ibid. 424; 1 Caines 526. Principal liable for the misconduct of his agent. 2 Liv. Prin. and Agent 207, 214, 226, 227; 13 Petersd. 724, 727–9. Master liable for contracts entered into by the agent, although unauthorized by him, if the consideration comes to the master's use. 2 Liv. Prin. and Agent 196–8; Long on Sales 221; 3 Esp. 214; 2 Kent's Com. 631; 9 Barn. & Cres. 78.

2. The accounts furnished by West, and received and retained by the defendants, and not objected to, are evidence against them. Cited, *Freeland* v. *Heron*, 7 Cranch 147, 151; 1 Esp. 376, and note; Pet. C. C. 21–2.

3. The letters of Mr. Winchester, written with the knowledge and by the direction of the defendants, containing instructions, &c., are the acts of the defendants, and proper and legal evidence against them. Cited, 2 *622] Stark. Evid. 60, &c.; 12 Wheat. *469; 7 Har. & Johns. 108; Pet. C. C. 21–2; 4 Taunt. 511. His knowledge is their knowledge. 11 Wheat. 87; 13 Petersd. 728, &c.

The circuit court substantially adopt the views of the plaintiff's counsel, and every part of their opinion is believed to be impregnable.

Johnson, in reply.—The ruling of the circuit court was, that the record of the parish court was evidence; and therefore, the counsel for the plaintiff below used the whole contents of the record before the jury. The court refused to discriminate, and to decide on those parts of the proceedings in the court of Louisiana, and the documents produced in that court, which were or were not legal testimony. This was the error then and now complained of. Some of the matters in the record, and part of the correspondence are not proved; nor was it shown, that any attempt had been made to prove them. It was the duty of the plaintiff below, to have proved the want of title, derived under the act of sale, independent of the record. He came into the circuit court to maintain his claim against the executrices of Mrs. Van Pradelles, for money had and received to his use; for money paid under a consideration which had failed. He could only maintain such a claim by legal proof, shown to be such by the rules of evidence, and not made such proof by the judgment of a distant tribunal, in a suit to which they were not parties.

Was the sale made by West binding on his supposed principals? It was not within the prescribed and declared principles on which he was to act under the power of attorney. No money was received by them. There was no proof that any money was received, but by the letter of West, and that letter was inadmissible in evidence, in the form in which it was presented to the court. The whole sum paid by Mr. Hull to West, if any was legally proved to have been paid, was by him retained. The last instalment, if paid to Mrs. Donaldson, was retained by her; if that sum was to be recovered back, it should have been sought in an action against her. She was one of the parties to the proceeding in the parish court to vacate the sale of the slaves, as pretended to have been made by West. She, with the co-heirs of *Mrs. Van Pradelles, recovered the slaves, for which, in part, the money paid by Mr. Hull was received by her; and on every [*623 principle, if any one was liable, she was liable to refund it. And yet, in the circuit court, a judgment was given for this amount, included in the instalments paid to, and retained by West, against the plaintiffs in error!

The defendant in error, as was submitted to the court, in the argument in chief, was bound to know the extent and nature of the powers of West (1 Pet. 264, 290); and whether the act of sale was in conformity to those powers, and to the laws of Louisiana. Those laws are, that executors cannot sell at private sale, and must sell by auction; and the judgment of the parish court was founded solely on the defect of the sale. It was, therefore, a loss sustained by his want of vigilance, by his inattention to his own obligations to protect himself from such a proceeding, from a loss not brought upon him by the acts of the plaintiffs in error, or by acts authorized by their agent; a loss they could not protect him from, but from which he could have protected himself. Suppose, the letter of attorney to West had, in express terms, directed the agent to apply to the court for an order to sell the slaves, and he had sold them, without such an order; it would not have been contended, that the constituents in the power were bound by such sale. The power of attorney in this case, is the same in effect. It contemplates the intended proceedings under it, to be in conformity with the laws of Louisiana. The acts of an agent beyond this authority, do not bind his principal. 7 Johns. 391.

As to the position, that the ratification of the acts of West bound the plaintiffs, although they were ignorant of their nature and invalidity; this has been already met by the argument before offered to the court. The plaintiffs in error did not know the law of Louisiana, nor had they an opportunity to know it.

The defendant in error claims, that the act of sale, which is proved by a notarial copy taken from the notarial register, is evidence, because such is the law of Louisiana as to copies of that kind. This may be the law there, but is not known to be the law by this court, and the party availing himself of the law should prove it to be such. The circuit court of the United
*624] *States are not bound to know the laws of the several states; and if they are called on to administer them in a case where they apply, the laws should be proved. This was not done.

Story, Justice (after stating the facts), delivered the opinion of the court.—The original suit was brought to recover back the purchase-money paid by the defendant in error for the slaves, and other compensation for the defect of title (as mentioned in the previous statement of the facts of the case). The jury found a verdict for the original plaintiff, for $2636.96, upon which judgment was rendered accordingly; and the present writ of error is brought to revise that judgment, upon certain bills of exceptions taken at the trial, on behalf of the plaintiffs in error.

The objections taken to the admissibility of the evidence were, in the first place, that the record in the case of the Heirs of Mrs Van Pradelles *v.* Hull, in Louisiana, was not evidence against the defendants in the present suit, except as to the judgment of the court in Louisiana. By the judgment, we are to understand, not that part of the record, which in a suit at the common law technically follows the *ideo consideratum est*, &c.; for that would be wholly unintelligible, without reference to the preceding pleadings and proceedings; but that which, in common, as well as legal language, is deemed the exemplification of a judgment; that is to say, all the pleadings and proceedings on which the judgment is founded, and to which, as matter of record, it necessarily refers. We are of opinion, that this objection was well taken. The suit was *res inter alios acta*, and the proceedings, and judgment therein, were no further evidence than to show a recovery against Hull, by a paramount title. There was error, therefore, in the circuit court, in refusing to sustain this objection.

The next objection was, that the copy of the original bill of sale of the slaves to Hull, on record in the notary's office, was not evidence, unless the plaintiff accounts for the non-production of the original. The validity of this objection depends upon this consideration, whether the non-production of the original was sufficiently accounted for. It was not accounted for by
*625] any proofs offered on behalf of the plaintiff; and unless *the circuit court could judicially take notice of the laws of Louisiana, there was nothing before the court, to enable it to say, that the non-production of the original was accounted for. We are of opinion, that the circuit court was bound to take judicial notice of the laws of Louisiana. The circuit courts of the United States are created by congress, not for the purpose of administering the local law of a single state alone, but to administer the laws of all the states in the Union, in cases to which they respectively

apply. The judicial power conferred on the general government, by the constitution, extends to many cases arising under the laws of the different states. And this court is called upon, in the exercise of its appellate jurisdiction, constantly to take notice of and administer the jurisprudence of all the states. That jurisprudence is, then, in no just sense, a foreign jurisprudence, to be proved in the courts of the United States, by the ordinary modes of proof by which the laws of a foreign country are to be established; but it is to be judicially taken notice of, in the same manner as the laws of the United States are taken notice of by these courts.

Under these circumstances, we are at liberty to examine the objection above stated, with reference to the known laws of Louisiana. Now, in Louisiana, as, indeed, in all countries using the civil law, notaries are officers of high importance and confidence; and the contracts and other acts of parties, executed before them, and recorded by them, are of high credit and authenticity. Some contracts and conveyances are not valid, unless they are executed in a prescribed manner, before a notary; others again, if executed by the parties elsewhere, may be recorded by a notary; and a copy of such record is in many cases evidence. Where a contract or other act is executed in a particular manner before a notary, the protocol or original remains in his possession *apud acta;* and the act is deemed, what is technically called, an "authentic act;" and a copy of such act, certified as a true copy, by the notary, who is the depositary of the original, or his successor, is deemed proof of what is contained in the original, for the plain reason, that the original is properly in the custody of a public officer, and not deliverable to the parties. This will abundantly appear, by a reference to the Civil Code of Louisiana, from article 2231 to 2250. Now, the bill *of sale, in the present case, is precisely in that predicament. It was executed before a notary, in the manner prescribed by the laws of Louisiana; the original is in his possession, and is an authentic act, *apud acta;* and therefore, the party is not entitled to the possession of it, but only to a copy of it. So that the absence of the original is sufficiently accounted for; and the copy being duly proved, was properly admissible in evidence. There was no error, therefore, in the circuit court, in admitting this evidence. [*626

And this constitutes an answer to the next objection: viz., "that to make the act of sale evidence, it must appear, by the laws of Louisiana, properly and legally proved, that the original act of sale, of which it purports to be a copy, is in the custody of a public depositary, and cannot be adduced in evidence." By the laws of Louisiana, as already stated, the original is in the hands of such a depositary; and therefore, the objection falls to the ground.

The next objection is, that the documents, and documentary proofs, contained in the record of the Louisiana suit above mentioned, are not evidence against the defendants. This has been already disposed of, under the first objection; and there was error in the circuit court in not sustaining the objection.

The next objection is, that the paper referred to in the testimony of Martin Blache, purporting to be letters-testamentary, granted by the court of probates of Louisiana to John K. West, are not legal evidence in the cause, against the defendants. We are of opinion, that the objection is

unfounded, and was rightly overruled by the circuit court. Blache swears, that he is the clerk and register of the court of probates; that the copy is a true copy of the original; that he cannot send the original, which is on file in the court of probates. Under such circumstances, the copy is the best evidence which the nature of the case admits of.

The next objection is, that the evidence of Mr. Winchester, with regard to the letters and the accounts of J. K. West, transmitted by him, is not admissible evidence in the cause. In our opinion, the circuit court was right in overruling this objection. Mr. Winchester was the attorney in fact of the defendants, and conducted, in their behalf, the correspondence with J. K. West; and the letters which passed between them *must be pre-
*627] sumed to have been brought fully to the knowledge of the defendants, and were important to establish a presumption of the ratification of the acts of West by the defendants, after the communication of them. How far they ought to avail for that purpose, was matter of fact for the consideration of the jury. The only question, with which we have to do, is their competency for this purpose.

The next and last objection, under this head, which properly should have preceded all the others, but was taken in a subsequent stage of the trial, is to the admissibility in evidence of the record from the parish court of the city of New Orleans, already referred to, for any purpose, on the ground, of its not being authenticated according to law. This objection was overruled by the circuit court, and, in our opinion, properly overruled. The record is authenticated in the precise manner required by the act of congress of the 26th May 1790, having the attestation of the clerk, and the seal of the court annexed, together with a certificate of the sole judge of the court, that the attestation is in due form of law.

We may now proceed to the consideration of the instructions asked of the court, in behalf of the defendants, in the farther progress of the cause, and refused by the court. With those asked by the plaintiff, in the actual posture of the cause, upon the present writ of error, we have nothing to do. The first instruction asked was, that there was no evidence in the cause to show, that John K. West had any authority from the defendants in the cause, to effect a sale of any property belonging to the estate of their testatrix, in Louisiana, except in conformity with the laws of the said state; and that unless the plaintiff shows a sale to the plaintiff (Hull) by West, in conformity with the said laws, and a subsequent recovery from Hull, he is not entitled to recover. We are of opinion, that this instruction ought to have been given, as prayed. Every authority given to an agent or attorney, to transact business for his principal, must, in the absence of any counter-proofs, be construed to be to transact it according to the laws of the place where it is to be done. A sale of slaves, authorized by an executrix to be made in Louisiana, must be presumed to be intended to be made in the manner required by the laws of that state to give it validity. And the purchaser, equally with the *seller, is bound, under such circumstances, to know
*628] what these laws are, and to be governed thereby. The law will never presume, that parties intend to violate its precepts; and indeed, the very terms of the letter of attorney under which the present sale was made, clearly point out, that it was in contemplation of the parties, that judicial, as well as extra-judicial, acts might be required to be done. The attorney is

to execute good and sufficient deeds, &c., for the purpose of transferring all the right and title of the heirs of the testatrix in her real and personal estate, to the purchasers; and generally to do, negotiate and perform all other acts, matters and things in the premises, for the effectual settlement of the estate, &c. Now, there could be no effectual settlement, unless a valid title to the slaves and other property sold, was given, according to the laws of Louisiana; and there is no evidence in the case, to show, that the defendants ever contemplated any sale, which should not be valid by those laws. The circuit court, therefore, erred in not giving the instruction.

The next instruction asked was, for the court to instruct the jury that, unless they believed, that John K. West strictly complied with the special instructions given him by the defendants, in the power of attorney of January 1816, and caused such legal proceedings to be instituted, as were necessary to effect a sale of the personal estate of which their testatrix died possessed, in Louisiana, and under such legal proceedings, made a sale of the slaves, being part of the personal estate, to the plaintiff (Hull), and that the slaves were subsequently recovered from the plaintiff, the plaintiff is not entitled to recover. For the reasons already given, this instruction ought also to have been given. This is not the case of a general agency, but a special agency, created by persons acting *en autre droit*. The purchaser was, therefore, bound to see, whether the agent acted within the scope of his powers; and at all events, he was bound to know, that the agent could not, in virtue of any general power, do any act which was not in conformity with the laws of Louisiana. The principals could never be presumed to authorize him to violate those laws; and the purchaser, purchasing a title, invalid by those laws, must have purchased it with his eyes open.

The next instruction asked was, for the court to direct the *jury, [*629
that if they should be of opinion, from the evidence, that the defendants did ratify the said sale of the slaves; yet, if they should be of opinion, that West did not, before such ratification, apprise the defendants of the fact, that the letters of administration were never taken out by him in Louisiana upon the estate of the testatrix, and of the fact that, by the laws of Louisiana, the executrices, the defendants, never could have claimed any property in the slaves so sold, and that the defendants, in ignorance of the existence of these facts, did ratify the said sale; then such ratification, being made without a full knowledge of all the circumstances material for them to know, before they made such ratification, is not binding upon them. The court refused to give this instruction, because the prayer did not arise from the facts of the case. But the court did direct the jury, that if the jury should believe, from the evidence, that the proceedings of their attorney were ratified by them, it was not material, whether they did or did not know, that West had taken out letters of administration on the estate of the testatrix. It is wholly unnecessary for us now to consider, whether the instruction, as prayed, ought to have been given or not; for we are of opinion, that the instruction actually given cannot, in point of law, be supported. No doctrine is better settled, both upon principle and authority, than this—that the ratification of an act of an agent previously unauthorized, must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is treated as invalid, because founded in mistake or fraud. Now, by the laws of Louis-

iana (Civil Code, art. 1681–82), testaments made in foreign countries, and other states of the Union, cannot be carried into effect on property in that state, without being registered in the court within the jurisdiction of which the property is situated; and the execution thereof is ordered by the judge; which may be done, if it be established, that the testament has been duly proved before a competent judge of the place where it was received. So that there is no doubt, that the due probate of the will of the testratrix, before the proper court of probate of Louisiana, was an indispensable preliminary to any sale of the property in that state. If West had not taken
*630] out letters of *administration on the estate of the testatrix, in Louisiana, it is clear, that he could have no authority to sell the slaves, or to bind the executrices.

For these reasons, we are of opinion, that the judgment of the circuit court ought to be reversed, and the cause be remanded to the circuit court, with directions to award a *venire facias de novo.*

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 Maryland, and was argued by counsel: On consideration whereof, it is the opinion of the court, that there was error in the said circuit court in refusing to sustain the objections made by the original defendants (now plaintiffs in error), contained in their first specification in the record, viz: "That the record in the case of *Donaldson* v. *Hull*, in the parish court of New Orleans, is not evidence in this cause against the defendants, except as to the judgment of the court in Louisiana." And also in their fourth specification, viz: "That the depositions and documentary proof contained in the record, in the cause of *Donaldson* v. *Hull* are not evidence against the defendants in this cause." And also, that there was error in the said circuit court in refusing to grant the first instruction prayed by the defendants, viz: "To direct the jury that there is no evidence in the cause, to show that John K. West had any authority from the defendants in this cause, to effect a sale of any property belonging to the estate of their testatrix, in Louisiana, except in conformity with the laws of said state; and that unless the plaintiff shows a sale to the plaintiff, Hull, by West, in conformity with said laws, and a subsequent recovery from Hull, he is not entitled to recover." And also, in refusing the second instruction prayed by the defendants, viz: "To direct the jury, that unless they believe that John K. West strictly complied with the special instructions given him by the defendants, in the power of attorney of January 30th, 1816, and caused such legal proceedings to be instituted as were necessary to effect a sale of the personal estate of which the testatrix died possessed in Louisiana; and under such legal proceedings, made sale of certain slaves,
*631] being part of the said *personal estate, to J. F. Hull, the plaintiff in this cause; and that the said slaves were subsequently recovered from the said Hull; that the plaintiff is not entitled to recover." And also, in giving the following instruction to the jury, viz: "That if the jury should believe from the evidence, that the proceedings of their attorney were ratified by them, it is not material, whether they knew, or did not know, that West had not taken out letters of administration on the estate of the testatrix." It is, therefore, considered by the court, that for these errors, the

judgment of the said circuit court be and the same is hereby reversed and annulled, and the cause is remanded to the said circuit court, with directions to award a *venire facias de novo*.

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*Edward Livingston, Appellant, *v.* Benjamin Story. [*632

Equity.—Bill of discovery.—Demurrer.

A bill of complaint was filed in the district court of the United States for the eastern district of Louisiana, to set aside a conveyance made by the complainant, of certain lots of ground in the city of New Orleans, and to be restored to the possession of the same, alleging that the deed by which he conveyed them was given on a contract for the loan of money, and that although in the form of a sale, it was given only as a pledge for the repayment of the money; and calling for an account of the rents and profits of the property. The defendant demurred to the bill, and assigned for cause, that the complainant, in the bill, had not made such a case as entitled him, in a court of the state of Louisiana, to any discovery touching the matters contained in the bill, nor to any relief in the district court; the ground of this demurrer was, that the district court of the United States of Louisiana had no power to entertain procedings and give relief in chancery; the district court sustained the demurrer, and dismissed the bill. The decree of the district court was reversed.

Provisions of the laws of the United States, establishing the courts of the United States in the district of Louisiana, and regulating the practice in those courts.

By the provisions of the acts of congress, Louisiana, when she came into the Union, had organized therein a district court of the United States, having the same jurisdiction, except as to appeals and writs of error, as the circuit courts of the United States in other states; and the modes of proceeding in that court, were required to be according to the principles, rules and usages which belong to courts of equity, as contradistinguished from courts of common law; and whether there were or not, in the several states, courts of equity proceeding according to such principles and usages, made no difference, according to the construction uniformly given by this court.

Congress has the power to establish circuit and district courts, in any and all the states of the Union, and to confer on them equitable jurisdiction, in cases coming within the constitution; it falls within the express words of the constitution.

The provisions of the act of congress of 1824, relative to the practice of the courts of the United States in Louisiana, contain the descriptive term, civil actions, which embrace cases at law and in equity, and may be fairly construed as used in contradistinction to criminal causes; they apply equally to cases in equity, and if there are any laws in Louisiana, directing the mode of proceeding in equity causes, they are adopted by that act, and will govern the practice in the courts of the United States.

If there are no equitable claims or rights cognisable in the courts of the state of Louisiana, nor any courts of equity, and no state laws regulating the practice in equity causes, the law of 1824 does not apply to a case of chancery jurisdiction, and the district court of Louisiana was bound to adopt the antecedent modes of proceeding, authorized under the former acts of congress.

*If any part of a bill in chancery is good, and entitles the complainant to relief or discovery, a demurrer to the whole bill cannot be sustained. [*633

It is an established and universal rule of pleading in chancery, that a defendant may meet a complainant's bill by several modes of defence; he may demur, answer and plead to different parts of the bill; so that if a bill for a discovery contain proper matter for the one, and not for the other, the defendant should answer the proper, and demur to the improper matter; and if he demurs to the whole bill, the demurrer must be overruled.

Appeal from the District Court for the Eastern District of Louisiana. On the 25th of July 1832, the appellant, Edward Livingston, filed a bill of complaint in the district court, by his solicitors; stating, that on or about the 25th of July 1822, being in want of money, he applied to Benjamin Story and John A. Fort, of the city of New Orleans, who agreed to lend him the sum of $22,936; of which a part only was paid in cash, part in a