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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*.

*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 proceedings 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

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note of John A. Fort, and \$8000, parcel of the said sum, was agreed to be afterwards paid to one John Rust, for the purpose and in the manner afterwards stated. To secure the repayment of the money and interest, at the rate of eighteen per centum per annum, he conveyed to Fort and Story certain property, with the improvements on the same, situated on the Batture, in New Orleans, owned by him. When this property was so conveyed, Fort and Story delivered to him a counter-letter, by which they agreed to reconvey the property to him, on the payment of \$25,000 (being the sum advanced and the interest), on the 1st day of February then next; but if the same was not paid on that day, the property should be sold; and, after paying the sum of \$25,000, and the costs of sale, the residue should be repaid to him. At the time of the sale, the whole property was covered with an unfinished brick building, intended for fifteen stores; and a contract had been made with John Rust, to finish the buildings for \$8000. Story agreed to pay the \$8000 to Rust, and this was, with the interest at eighteen per cent. on it, a part of the \$25,000 to be repaid on the 1st day of February 1823. The property was, at the time of the loan, worth \$60,000, and was then worth double the sum.

Story and Fort took possession of the property, and the complainant *634] went to New York on a visit, expecting the stores to *be finished by his return, or that at least three of them would be in a condition to let; he having received an offer of rent for each of the three, which would have given a rate of interest equal to a principal of \$10,000 each for the three smallest stores. The complainant stated that, on his return to New Orleans, he found little or nothing had been done to the stores; the \$8000 had been paid to John Rust; and if the property had been sold in February, it would not have produced anything like its value. He, therefore, applied to Fort and Story for a further time to pay the money borrowed, which they would not consent to, but on the following conditions: that the property should be advertised for sale on the 2d day of June then next; that the sum due to them should be increased from \$25,000 to \$27,500; which sum was composed, first, of the said \$25,000; secondly, of \$1500 for interest, for the delay of four months, at eighteen per cent.; thirdly, \$800 for auctioneer's commissions, of \$50 for advertising, and of \$200 arbitrarily added, without any designation; of which a memorandum was given by the said Fort and Story, and was ready to be produced; and that the counter-letter, so executed as aforesaid, to him, by the said Fort and Story, should be annulled. Being entirely at the mercy of Fort and Story, he was obliged to consent to these terms, in hope of relief when money should become plenty; but, on the contrary, the pressure became greater, and, on the 2d of June, in order to obtain a delay of sixty days, he was forced to consent to sign a paper by which it was agreed that the debt should be augmented to the sum of \$27,830.76; and that if the same was not paid on the 5th of August, then the property should belong to the said Fort and Story, without any sale; but there was no clause by which he should be discharged from the payment of the sum so borrowed, as aforesaid; whereby he would have been liable to the payment of the sum so advanced, in case the property had fallen in value.

On the 5th day of August above mentioned, the said Fort and Story demanded, by a notary, the full sum of \$27,830.76, which included the said

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charge of \$800 for auctioneer's fees for selling, although no sale had been made; *and all the other illegal charges above stated; and on non-payment, they protested for damages and interest on the sum; there- [*635 by showing their intent to hold the complainants responsible for the sum demanded, if the premises should, by any accident, become insufficient in value to pay the same. Fort and Story remained in possession of the said premises, until the death of the said John A. Fort, which took place some time in the year 1828; and after his death, the said Benjamin Story took the whole of the said property, by some arrangement with the heirs of John A. Fort; and was, and ever since had been, in the sole possession thereof, and the said John and Benjamin, in the lifetime of the said John, and the said Benjamin, after the death of the said John, had received the rents and profits of the said property to the amount at least of \$60,000.

The bill stated, that the complainant was advised and believed, he had a right to ask and recover from the said Benjamin Story the possession of the said property, and an account of the rents and profits thereof; the conveyance of the same having been made on a contract for the loan of money, and although in the form of a sale, was, in reality, only a pledge for the repayment of the same; the act by which the complainant agreed to dispense with the sale being void and of no effect in law. The bill concluded as follows:

"And your orator prays, that if, on said account, it shall appear that there is a balance due to him, as he hopes to be able to show will be the case, that the said Benjamin Story may be decreed to pay the same to him, and to surrender the said property to him; and that if any balance be found due from your orator, that the said Benjamin Story may be decreed to deliver the said property to your orator, on his paying or tendering to him the said balance; and that your orator may have such other relief as the nature of his case may require; and that the said Benjamin Story, in his own right, and also as executor of the last will and testament of the said John A. Fort, or in any other manner representing the estate of the said John A. Fort, may be summoned to answer this bill; your orator averring that he is a citizen of the state of New York, and that the said Benjamin Story is a citizen of the state of Louisiana, now residing in New Orleans."

*Upon this bill, a *subpoena* was issued, directed to the marshal, [*636 commanding him to summon Benjamin Story to appear at the district court, on the 3d Monday in February 1834, "to answer a bill exhibited against him in the said court, together with certain interrogatories therewith filed by the complainants." A *subpoena* was also issued in the same terms, directed to Benjamin Story, executor of John A. Fort.

On the 17th day of February 1834, Benjamin Story came into court, and by his solicitor, L. Pierce, Esq., filed the following demurrer: "The defendant, by protestation, not confessing all or any of the matters and things in the complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, does demur to the said bill; and for cause of demurrer shows, that the complainant has not by his said bill, made such a case as entitles him, in a court of equity, in this state, to any discovery from this defendant, touching the matters contained in the said bill, or any or either of such matters, nor entitles the said complainant to any relief in this court, touching any of the matters therein complained of. And for further

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cause of demurrer to said bill, he shows, that by complainant's own showing, in the said bill, the heir of John A. Fort, who is therein named, is a necessary party to the said bill, inasmuch as it is therein stated, that all the matters of which he complains, was transacted with this defendant and John A. Fort; whose widow, the present Mrs. Luzenbourg, is the sole heir and residuary legatee; but yet the said complainant hath not made her party to the said bill, wherefore, as before, and for all the above causes, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto; and he prays the judgment of this honorable court, whether he shall be compelled to make any further and other answer to the said bill; and he humbly prays to be dismissed from hence, with his reasonable costs in this behalf sustained."

On the 20th of May 1834, the district court, by a decree, sustained the demurrer, and ordered the bill of the complainant to be dismissed. The complainant prosecuted this appeal.

*637] *The case was argued by *White* and *Key*, for the appellants; and by *Clay* and *Porter*, for the appellee.

For the complainant, it was contended.—1. That the district court of Louisiana has, by the constitution and laws of the United States, the same chancery powers as a circuit court of the United States within the other states. 2. That the bill filed, presents a case in which, by law, and the usages of a court of equity, the complainant is entitled to relief, and that the demurrer ought to have been overruled. 3. The bill of complaint presents a case which, according to the laws and practice of Louisiana, entitles the complainant to relief.

Key, for the appellant.—The bill states a case for a court of equity; and the sole inquiry is, whether the district court of Louisiana has, by the constitution and laws of the United States, the same chancery powers as other courts of the United States. This jurisdiction that court certainly has, unless it is taken away by the act of congress of 26th May 1824, ch. 181 (4 U. S. Stat. 62), relating to the proceedings in the courts of the United States in Louisiana. That act directs, that the modes of proceeding in the courts of the United States, shall be the same as in the courts of Louisiana. The district court has power by the law to regulate the practice in the court, where the rules of the state courts are not adapted to that court. The rules which the court may adopt, must be such as will not interfere with the rights of parties in the court, to all the remedies which, in other courts of the Union, are administered according to the constitution.

Relief in equity, when there is not a plain and adequate remedy in law, is among these rights. 4 Wheat. 212, 222, 115. It became the duty of the court to make adequate rules to apply such remedies. It will be contended by the appellees, that the operation of the act of 1824 was to take away equity jurisdiction. There is nothing in the letter of the law which does this; nor which will, in any way, authorize the inference that such was its purpose. The law, says the court, may, not that it must, adopt the state practice. As the constitution gives a right to relief in equity, the law should *638] be *construed so as to enable a party to obtain that relief. In Louisiana, there are no courts of chancery; and therefore, no rules can be

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invoked from the Louisiana courts, to regulate proceedings in equity cases. There could not be an intention by congress to adopt the rules of the state courts in such cases, as no rules having any application to cases of that description, existed.

The application made to the district court of the district of Louisiana was not termed a bill in equity or in chancery, but a bill of complaint; and under this, if, by the practice of Louisiana, relief could be afforded, why was it not given? Jurisdiction, even according to the principles asserted by the appellees, should have been taken, if any remedy could have been afforded in the courts of Louisiana. But in this case, the court took equitable jurisdiction of the bill; for it sustained the demurrer, and dismissed the bill. Cited, 3 Pet. 434, 446, 450; 2 Mason 270; 1 Gallis. 536.

One of the great benefits which, under the constitution, a party who goes into a court of equity has, is that of a discovery. This is obtained, by the right he has to put interrogatories to the defendant; and the practice of the chancery courts of England has been adopted in the courts of the United States, as affording the means of using this, as well as all other rights which exist under that practice. It is a right not depending on the will or consent of the court. But in the courts of the state of Louisiana, the right to a discovery from a defendant exists only by the consent of the court.

The complainant here presents a case showing wrongs, oppression, injustice and usury. He has, under the constitution, a right to present his case in a federal court, and he should there have had relief. These are constitutional rights, which should not have been denied to him; and yet his suit is dismissed, and no remedy is afforded to him.

Porter and Clay, for the appellee.—It is understood, that the question in this case is, whether the common law, and the equity forms of proceeding, shall be introduced into Louisiana. You cannot introduce the chancery law, unless you introduce the common law; and if this is done, it will produce great dissatisfaction in that state. *It is a singular question, [*639 whether a system of jurisprudence exists in a state, where it is not known or understood? Whether, in a community where the civil law prevails, a system of laws shall be introduced which are against their prejudices?

The constitution was formed, at a time when the common law prevailed in all the states which then composed the Union. In those states, there must, therefore, have been chancery law, for it is a part of the common law; and in reference to this state of things, in all those states, there were recognised and established a chancery and a common-law jurisdiction, and the principles and rules of courts of common law and courts of chancery. The third section of the third article shows, that the constitution did not introduce those principles, and those modes of proceedings. It found them existing, and provided for their administration. The terms of the constitution are, "all cases of law and equity, arising under the constitution." The difference between law and equity, requiring different tribunals for their application to cases, exists in no other country but in England and the United States.

Our proposition is, that there can exist no equity law but where the common law prevails. In those states, they are distinguishable from each

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other, although part of the same law, and these distinctions are considered part of the common law; and different courts enforce these different systems. But in Louisiana, these distinctions do not exist. To talk of distinguishing law and equity, is as reasonable there, as to state that equity and equity differ. These views of the subject are aided by the act of congress of 1792, in addition to the act of 1789. The latter act provides for modes of proceeding in courts of equity, as contradistinguished from courts of law.

The jurisdiction of the courts of the United States is to be exercised according to what is given to those courts by the laws of the United States; not by the general provisions of the constitution. If the highest court under the constitution has other powers, those of the inferior courts exist only under acts of congress. The cases cognisable under the constitution, are those arising under the constitution and laws of the United States; and this is not such a case. By the constitution and laws of the Union, the *640] courts of the *United States have power to decide rights in cases between citizens of different states, arising under the constitution and laws of the United States; but not others. Does the term "law and equity" run through all the provisions of the article? It is contended, that by a fair and grammatical construction, it does not.

This court will not take hold of all the powers which the constitution has declared to belong to the judiciary department, and make rules to execute those powers. Suppose, at the formation of the constitution, there had existed in some of the states a system of civil law, and no common law; would the common law have been introduced by the establishment of the constitution? The law would have been taken as it stood and was enforced; as no purpose existed to introduce new systems of law, but only to carry into effect the prevailing laws. The judiciary act provides, that jurisdiction shall be given to the courts of the United States in law and equity, concurrent with the courts of the state. But where there is no equity jurisdiction in a state, how can there be a concurrent jurisdiction? It would be a limitation of the powers of the courts of the United States, to say, they have no jurisdiction, except in cases of law or equity; as it would exclude the jurisdiction from cases arising under any laws. The language of the constitution, although employed at the period when no systems existed but those of law and equity, is ample for all cases.

As to the suggestion, that the district judge should have moulded the proceedings so as to give relief, it must be observed, that the case stood before the judge upon a special demurrer, assigning for cause that the plaintiff had departed from the whole course of proceeding in that court. It was not asked of the court below, that the proceedings should be amended, and the judge was bound to decide the case on the bill and the demurrer. But if a district court of the United States, sitting in Louisiana, has law and equity jurisdiction, and giving the doctrine its full effect, it is contended, that congress, in conferring equity jurisdiction on any court of the United States, has power to declare what shall be the form of the proceedings by which that equity jurisdiction is to be exercised.

The first proposition, that congress has power to provide forms of proceeding for its equity courts, will not be doubted. *This court has *641] more than once decided, as has been stated, that in relation to the

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inferior courts, the judicial power extends no further than legislation has conferred it. If this be true, it follows, that congress can modify the means by which that power is to be exercised, as well as limit its extent.

The second proposition, that congress has given the United States equity court in Louisiana, forms of proceeding different from those given the courts of chancery in England, may not be so obvious, but it is equally true. The provisions of the act of congress of the 26th of May 1824, furnish the law on this subject. How stands the case on that law? All civil causes in the district court of the United States in Louisiana must, by the act of 1824, be conformable to the state practice. A suit in equity is a civil cause; but a suit in equity shall not be conformable to the state practice.

The first rule in the construction of statutes is, to follow the letter, unless the interpretation leads to an absurd and pernicious result. The act of 1824, which declares that the forms of proceeding in the United States court shall be the same in the state court, produces no such consequences. Would it not, therefore, be a violation of a rule, in the case now under consideration, that though the law said the practice in both courts should be the same; this court should pronounce they are not to be the same.

As to the inquiry, what is to be done, if there is no equity state court, nor any law regulating the practice in equity cases; this question is answered by the cases of *Robinson v. Campbell*, 3 Wheat. 212; *United States v. Howland*, 4 Ibid. 108; *Parsons v. Bedford*, 3 Pet. 433.

When it is said, that the proviso in the act of 1824, gives to the judge of the court of the United States power to modify the proceedings in the courts of Louisiana, and therefore, there is no imperative and absolute force given to the state proceedings; this is admitted to be true. It does leave the judge power to modify the state proceedings; but then it follows, that until he does modify them, they form the rule. Were it otherwise, the proviso would be the rule, and the general enacting clause, the exception.

*It is admitted, that no absolute repeal was made of the antecedent modes of proceeding, authorized by the former acts of congress. [*642 There is no absolute repeal of those laws, but there is a repeal *sub modo*, that is, the state forms of proceedings take place of the common law and equity remedies, unless the judge revives them. If the statute has not this force, it means nothing and effects nothing.

Now, though there must be courts of equity in each state, which, in the absence of any special legislation, are to be governed in their practice by that regulating the court of chancery in England; though state modes of proceeding have no force except so far as congress gives them force; though the judge may make rules to modify them, though former modes of proceeding are not so absolutely repealed, but that the judge may by rule preserve them; still, any or all of these postulates do not authorize the conclusion, that congress may not take the civil law proceedings of Louisiana for the forms of an equity court in Louisiana. They all stand by the side of our position, not opposite to it. The proposition is, that the congress of the United States may adopt what forms of proceedings it thinks fit, for the administration of justice in its equity courts, provided it preserves to the suitors the power of court over proof, and the capacity to extend relief, which distinguish a court of equity from a court of common law.

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Congress has, clearly, by the act of 1824, adopted the Louisiana practice. What does that act say? The mode of proceeding in civil causes, in the United States courts, shall be conformable to the law directing the modes of practice of the state court, unless the judge modify them. Well, he has not modified them. Then, why should we not have the state practice? If our civil law proceedings give full effect to all powers of an equity court; if, in truth, they be the same; why should the fact of their being called law proceedings, deprive the appellee of the benefit of the act of 1824? It is not admitted, that an adverse answer can be given to this question. The truth is, that there are no law proceedings in Louisiana, as contradistinguished from those in equity; and the application of the term law proceedings to a procedure essentially that of chancery, is the cause of all the *643] difficulty in this case. *If they were called proceedings in equity, it appears, the act of 1824 would apply; but not being so called, it cannot. The ordinary courts of Louisiana are armed with the full powers of an equity tribunal. So true is this, that the counsel for the appellant is challenged to show the slightest discrepancy in any important particular; and it is believed, that if any one of the court were about to create a court of equity, not by a general reference to another system, but by a special enactment, he would take the Louisiana statute as a model; or, if he did not, his own legal accomplishments would induce him to draw up one in all respects similar.

There is a most important statute which has been overlooked. It is that of 1828, ch. 68. It is urged, that the national legislature, by the act of 1824, intended to change the former practice of the law, on the equity side of the district court, in Louisiana, and introduce the civil law practice into both; and that, in fact, it had done so. The act of 1828 is referred to, wherein it is declared, that the forms of proceeding in the courts of the United States, in all states admitted into the Union, since the year 1789, should be according to common-law and equity forms; but that the provision of the act should not be applied to the state of Louisiana. It appears, that in no more clear or unequivocal manner could congress have declared their opinion, that Louisiana had another system provided for her, and that it would be unwise and unjust, to give to her what was properly extended to others.

White, of Florida, for the appellant.—The act of congress organizing a district court for the territory of Orleans, conferred upon it the same jurisdiction as that which was exercised by the court of the Kentucky district. The act of 1812, providing for the admission of the state of Louisiana into the Union, declares, that the district court of the state of Louisiana, shall have the same powers and jurisdiction as the district court for the territory of Orleans. This law refers to the act which was based upon the act organizing a court of the United States for the Kentucky district, which, under the provisions of the act constituting it, had all the powers of a circuit *644] court of the United States within the other states. *It may then be assumed, that, by the laws of the United States, the district court of the state of Louisiana had, prior to the act of 1824, the same powers and jurisdiction, at law and in equity, as that possessed and exercised in all

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respects by the circuit courts of the United States within the several states.

This jurisdiction is regulated by law, in pursuance of the constitution. The first section of the third article of the constitution declares, that the "judicial power of the United States shall be vested in a supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish." The district court of Louisiana is, as it has been shown, one of these inferior courts ordained and established, in which this judicial power is vested. The second section, third article, declares, that "the judicial power shall extend to all cases in law and equity." From the moment of the establishment of the district court of Louisiana, there were vested in it, by the constitution, equity powers and jurisdiction; these powers and that jurisdiction cannot be changed or limited by any act of congress. The jurisdiction, not only of the supreme court, but of the inferior courts, is established by the constitution; and cannot be diminished, altered or limited, under the pretext of regulating the practice of the courts by congress. If, then, the act of 1824 was susceptible of the construction placed upon it by the learned counsel for the appellee, it would be a violation of the constitution of the United States. Congress have as much power to declare that any other provision of the constitution shall be dispensed with, or suspended, in any state of this Union, as to enact that the judicial power of the district court of Louisiana shall not extend to cases in equity; and the equity referred to has been construed by this court, to be that system we borrow from the parent country; in other words, that good, old, conscientious, honest system, based on the civil law, as understood and practised in England.

From this view of the powers conferred by the constitution and laws of the United States, it is proposed to establish these points: 1. That the district court of the United States, sitting in Louisiana, has equity jurisdiction. 2. That there are no equity proceedings in Louisiana as *contradistinguished from law; and that there is no law of the state of Louisiana, directing the mode of practice in equity cases, as contradistinguished from cases at law. [*645

It is not to be disputed, after admitting the equity jurisdiction of the district court, that its chancery powers are the same, its rule of decision the same, and its jurisdiction the same as those of the circuit courts of the United States in the other states. The character of the state law has no influence whatever upon the exercise of equitable jurisdiction by this court. Its remedies in equity are not to be according to the practice of the state court, but according to the principles of equity, as distinguished and defined in that country from which we derive our knowledge of these principles. The district court of Louisiana is, in fine, a thoroughly organized court of equity; and as perfectly competent to the administration of equity principles, as a court of chancery in England, or a court of equity in Virginia or New York. So it is in all the other states, by the judiciary act of 1789, made in execution of the constitution of the United States; and so it, consequently, is in the state of Louisiana, whose inhabitants enjoy the benefits of the same law and constitution, to be expounded in precisely the same way towards them, as towards the other states. It is also free from dispute, that, by the process act of 1792, which was extended to Louisiana, the

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modes of proceeding in suits of equity, in the district court of Louisiana were not to be according to the practice of the state courts, but according to the principles, rules and usages which belong to courts of equity, as contradistinguished from courts of common law ; subject to such alteration by the courts as might be thought expedient, &c.

The situation or condition of the district court of Louisiana, before the act of 1824 was passed, must be admitted, then, to have been as follows : It was a court of equity, in the most comprehensive sense of that expression, according to the principles of equity jurisdiction as defined and distinguished in England, with such limitations only as were to be found in the constitution and laws of the United States. The practice of the court, moreover, was such as prevailed in courts of equity, as distinguished from courts of law ; and the rules of its practice were to be sought, like its jurisdiction, in the principles, *rules and usages of courts of equity, unless *646] altered in the manner authorized by the act of 1792. Whether the district court of Louisiana, at any time, actually exercised its jurisdiction, according to this practice, is of no moment ; the court possessed the faculty of exercising it in this way, whenever a suitor should lawfully appeal to it.

It is in regard to a court of equity of this description, constituted by a law of the United States, to exercise its powers according to the laws and the constitution of the United States, that the act of the 26th of May 1824, is to be interpreted ; and it is to be interpreted with the aid and influence of the admission, that the courts of Louisiana exercise no jurisdiction in equity, as distinguished from law, and have no practice applicable to such a distinction ; and that there is no law of the state directing the mode of practice in such suits of equity. The act is to be interpreted as it ought to be, in a case where it is acknowledged, that the mode of practice prescribed by the law of Louisiana is applied to the cases in which proceedings are at law, and not in equity as distinguished from law ; and that there is no law of the state nor practice of the courts, having any reference to a proceeding in equity as distinguished from law.

With this view of the equity jurisdiction, and modes of proceeding in equity, of the district court of the United States in Louisiana, before the act of the 26th of May 1824, we proceed to a brief consideration of that act. The act of 1824 does not absolutely repeal the antecedent modes of proceeding authorized in the district court of the United States, under the former acts of congress ; nor give imperative force to the modes of proceeding in civil causes in Louisiana. This was decided in *Parsons v. Bedford*, and the counsel of the appellee admit the propriety of that decision. The act, in general terms, provides, that the mode of proceeding in civil causes, in the courts of the United States, in Louisiana, shall be conformable to the laws directing the mode of practice in the district courts of said state ; but the judge of the United States court is authorized to make such provisions as may be necessary to adapt the state laws of procedure to the organization of such court of the United States, and to avoid any discrepancy, if any such should exist, between such state laws, and the laws of the United States.

*647] The terms of the act are broad enough to comprehend every *description of civil causes ; suits in equity as well as suits at law ;

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and to require that all of them shall conform to the laws directing the mode of proceeding in the state courts ; but whether suits in equity are or are not comprehended, must depend on the laws of Louisiana, which are made the guide, subject to the power of modification in the judge. If the laws of Louisiana contain no direction as to the mode of practice in suits of equity, as contradistinguished from suits of law, and if this distinction is, as has been stated, unknown to the courts of that state, then it is submitted, as the true construction of the act of May 1824, that the practice in equity suits must stand upon the process act of 1792, because there is no direction in the state laws to affect the practice in such suits. It cannot be reasonably contended, that if the state laws did not direct the mode of practice in the district courts of the state, in any respect, that, nevertheless, the practice of the United States courts, in equity suits, was to undergo a change, and to conform to the practice of the state courts. The conformity required, is that of the practice of the United States courts to the laws, directing the mode of practice in the state courts, and not to practice itself ; and this is the plainer, from the power given to the judge, by the proviso, which is, to make such rules, &c., as shall avoid the discrepancy, if there be any, not between the practice of the state courts and that of the federal courts, but between such state laws and the laws of the United States. The intention of the act of 1824 was, in fine, to subject the practice of the United States courts to the directions of the law of the state, if there were any, as it was before subjected to the laws of the United States ; merely providing, by a power in the judge, to render the laws of procedure conformable with the organization of the court, and to prevent discrepancy ; but it was not the intention of the act, to change the practice, if there was no such direction. Now, if the state laws make no direction as to the mode of proceeding in the state courts, then the act of 1824 is wholly without effect ; and if the state laws contain no direction as to suits in equity in the state courts, then the act is wholly without effect upon suits in equity in the United States courts. As there was no absolute repeal of the antecedent equity practice, by the act of 1824, that practice continues in force, until the state laws contain a *direction in regard to the practice in such suits in the state courts. [*648

The counsel for the appellee contend, that as the act of 1824 leaves the judge the power to modify the state proceedings, "it follows, that until he does modify them, they form the rule ; and that were it otherwise, the proviso would be the rule, and the general enacting clause the exception." But this is plainly a *non sequitur* ; for the state proceedings do not form the rule in equity, until the judge modifies them, unless the direction in the state laws applies to the practice of suits in equity. If it does not, no modification is necessary, because the state law, for want of a direction, does not apply at all.

The learned counsel also contend, that although there is no absolute repeal of antecedent modes of proceeding, authorized by former acts of congress, yet, "there is a repeal *sub modo* ; that is, the state forms of proceedings take place of the common law and English remedies, unless the judge revives them." But this begs the very question. The argument for the appellant is, on the contrary, that there is no appeal, absolute or *sub modo*, of the antecedent modes, unless the state law contains a direction

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in regard to the suits in which those antecedent modes of practice were authorized. If it is silent in regard to suits in equity, then the antecedent practice in equity is not repealed at all.

The counsel for the appellee state their proposition, in the following terms: "That the congress of the United States may adopt what forms of proceeding it thinks fit, for the administration of justice in its equity courts, provided it preserves to the suitors the power of the court over proof, and the capacity to extend relief, which distinguish a court of equity from a court of common law;" and "that congress has, clearly, by the act of 1824, adopted the Louisiana practice; for what does that act say? The mode of proceeding in civil causes in the United States court shall be conformable to the law directing the modes of practice in the state court, unless the judge modify them. Well, he has not modified them. Then, why should we not have the state practice?" The answer may be readily given. The proposition is not consistently pursued throughout. Congress has not, by *649] the act of 1824, adopted the Louisiana practice, generally or *absolutely, as the proposition imports; nor does that act adopt the practice at all. The very terms quoted by the counsel are, that the proceedings in the United States courts are to be conformable to the laws directing the practice; and unless the laws direct the practice in equity suits in the state courts, they contain no direction to which the equity practice in the United States can conform; in other words, there is no law of Louisiana upon the subject of equity suits, and consequently, there is no law for the practice in equity suits to conform to. The state practice, therefore, is not to be followed in an equity cause, because it is the practice in suits at law, as distinguished from equity, and not the practice in suits in equity as distinguished from law; in regard to which latter suits, there is no law of Louisiana directing anything.

It may, perhaps, be said, that the arguments thus stated mistake the intention of the act of 1824, which was to make the practice in the courts of the United States, in suits of all kinds, conform to the directions of the law of Louisiana, in suits of any kind; and that this is shown by the terms of the law, which says that the mode of proceeding in such causes in the courts of the United States, shall be conformable to the laws directing the practice in the district courts of the state, without saying in what causes, whether of one description or another. It is submitted, however, that the act is most reasonably interpreted, in being held to give effect to the law of Louisiana, in cases to which it applies, and not in cases to which it does not apply. If the argument stated in the preceding paragraph is carried out, it will extend to this: that the law directing the practice in suits between ordinary parties in the state courts, is to govern in causes of admiralty and maritime jurisdiction in the United States courts—for these are certainly civil causes, and come as fully within the letter as suits in equity. It will extend even to this: that the state law directing the modes of proceeding in criminal causes, is to govern in the United States courts in civil causes—which is, of course, too extravagant to be maintained. But where is the line to be drawn, if it has not been truly drawn in the preceding remarks by the counsel for the appellee? The conformity which the act of *650] 1824 intended to produce, is the conformity between corresponding or similar causes, and not between causes *having no correspond-

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ence or similarity ; and it refers to the law, and not to the practice of the state courts, for this very reason. If the reference had been to the practice of the state courts, in civil causes, and not to the law, it might be considered that the practice was rigorously adopted, however incongruous, and whether applicable or not ; but when the reference is to the law directing the practice, then the reason, spirit, intention, scope and application of the law, altogether, form a part of it ; and if it means to give no direction in regard to suits of a certain description, it is as to them as if it were no law.

The result of these remarks may be briefly stated as follows : the act of 1824 intended that the practice in the United States courts should follow the direction of the law of Louisiana regulating the practice of the state courts. That law does contain a direction in regard to suits at law, and to this direction, suits at law in the United States court must conform, subject to the power of modification in the judge. It does not contain a direction in regard to suits in equity ; and therefore, such suits are to follow the antecedent modes of procedure authorized by former acts of congress. The rules of proceeding in the state court, however clearly the counsel for the appellee may have shown, that "they are fully adapted to a court of equity," are not the practice of the courts of the United States, because no law of congress has enacted that they shall be. It is not enough, to show that the state practice is adapted to a court of equity, it must also be shown that it has been adopted for equity suits in the United States court, by an act of congress.

On this point, however, of adaptation of the state mode of procedure to suits in equity, the counsel for the appellant will make a few remarks. That, by modifications, it may become adapted to such suits, need not be controverted ; for the basis of the state procedure being petition and answer, if the power of modification is unbounded, it may, of course, be modified to the very point of adaptation. The act of 1824, indeed, authorizes the very end or result, by enacting, that the judge may make such rules and provisions as may be necessary to adapt the state laws of procedure to the organization of the federal court ; and where the counsel for the appellee find a reason for their strenuous claim to the benefit of the state practice, *in preference to what they style the chancery practice of England, when [651 the power of modification under the act of 1824 is large enough to produce a perfect similitude of the two, it is difficult to perceive.

That the practice of the state courts is not adapted, at present, to suits in equity, has not, it is believed, been shown, nor can it be. It must be useless, to point out all, or, indeed, any of the differences which exist between the two modes of procedure ; the statement of a general principle will be sufficient to show it, and that is, that the remedies in equity result from the principles of equity, and that they must be sought, obtained and used in conformity to those principles. A mode of procedure which does not acknowledge the distinction, cannot give the remedies which depend upon the distinction. It may, without doubt, be made to give them, by modifications ; but to say this, is to say, that in their present state, they cannot give them. Whether the act of congress might not safely have extended this mode of procedure to suits in equity alone, with a power of modification, is, however, not the question ; for it may, perhaps, safely extend any mode of procedure, with the same modifying power ; but it is, whether they have

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extended it by the act of 1824 ; and that they have not, has, it is hoped, been already shown.

There is one remark, which it is deemed proper to make, in regard to proceedings in equity suits in the courts of the United States. The distinction between law and equity exists in the constitution, as well as in the organization of the federal courts. It cannot be lawful to confound it. Rights of the highest nature depend upon it. If the case is an equity case, its modes of proof and trial, as well as its decrees, are of one kind ; if at law, they are of another. A plaintiff cannot submit the trial of facts, in a case at law, to the court ; nor can the facts, in such a case, when tried by a jury, be reviewed by the court. These are great constitutional provisions, and they cannot be secured, without maintaining the distinction between suits at law and suits in equity ; or without maintaining equity pleadings, which are essential to give effect to the distinction. The pleadings must show a case in equity, and not a case at law ; they must be such as to enable the court to form the issue, and also to decide it ; such also as to give *652] the parties the benefit of *a review in the supreme court : the pleadings, the proofs and the decree, must all be so framed, as to show what is asked, what is the party's right to it in equity ; what is granted, and that what is granted is within the competency of a court of equity ; and that a code of procedure for cases at law will answer fully these ends, is not admitted, and has not been shown. That the principles of equity can be so applied in Louisiana as to give an effect to contracts and transactions in violation of the laws of the state, is a position that it was not expected to find in the argument for the appellees, manifesting so strong a regard for the legislature of that state. Those principles are of universal obligation, from their conformity to justice and conscience between the parties, and to the will of the legislature, which can never be presumed to authorize what is contrary to either ; and therefore, can never be applied, except to promote probity and fair-dealing among men, and to aid the laws of the land in advancing both.

THOMPSON, Justice, delivered the opinion of the court.—The appellant, Edward Livingston, filed his bill of complaint in the district court of the United States for the eastern district of Louisiana, against the appellee, Benjamin Story, to set aside a conveyance made by him, of certain lots of land in the city of New Orleans, and to be restored to the possession of said lots ; alleging that the deed was given on a contract for the loan of money. Although in the form of a sale, it was in reality a pledge for the repayment of the money loaned, and calling for an account of the rents and profits of the property. To this bill, the defendant demurred ; and the court sustained the demurrer and dismissed the complainant's bill, and the cause comes into this court on appeal.

It will be enough for the purpose of disposing of the questions which have been made in this case, to state only some of the leading facts which are set forth and stated in the bill. The bill alleges, that on or about the 25th of July 1832, the defendant and John A. Fort loaned to him, the complainant, the sum of \$22,936, to secure the payment of which, with *653] interest at the rate of eighteen per cent. per annum, he conveyed to them at lot of ground in New Orleans, with the *buildings and im-

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provements thereon. That a counter-letter or instrument was, at the same time, executed by the other parties, by which they stipulated to reconvey the property, on certain conditions. That the lot was covered with fifteen stores, in an unfinished state, and the object of the loan was to complete them. The property is stated to have been worth at that time \$60,000, and is now worth double that sum. That the complainant, soon after the said transaction, left New Orleans, where he then resided, on a visit to the state of New York, expecting that, during his absence, some of the stores would have been finished, or in a state to let. That on his return, he found that Story and Fort had paid \$8000 to a contractor, who had failed to finish the buildings, the rent of each of the three smallest of which would be the interest of \$10,000 a year, when finished. A further time was requested for the payment of the money, which Story and Fort would not agree to, but upon condition that the property should be advertised for sale on a certain day named; that the sum due should be increased from \$25,000 to \$27,000, which sum was made up by adding to the \$25,000 the following sums; \$1500 for interest for the delay of four months, at eighteen per cent.; \$800 for auctioneer's commissions; \$50 for advertising, and \$200 arbitrarily added, without any designation; and that he, the complainant, should annul the counter-letter given to him by Story and Fort. That the complainant, being entirely at the mercy of the said Story and Fort, consented to these terms, in hopes of being able to relieve himself before the day fixed for the sale of his property; but being disappointed, he was on that day, in order to obtain a delay of sixty days, forced to consent to sign a paper, by which it was agreed that the debt should be augmented to the sum of \$27,830, and that if the same was not paid at the expiration of the sixty days, the property should belong to the said Fort and Story, without any sale. The bill contains some other allegations of hardship and oppression, and alleges, that the rents and profits of the property, received by Fort and Story, in the lifetime of Fort, and by Story, since the death of Fort, amounts, at least, to \$60,000. The bill then prays that the said Benjamin Story may be cited to appear to the bill of complaint, and answer the interrogatories therein propounded.

*The defendant in the court below, demurs to the whole bill, and for cause shows, that the complainant has not by his said bill made [*654 such a case as entitles him, in a court of equity, in this state, to any discovery from this defendant, touching the matters contained in this bill, nor any or either of such matters; nor entitled the said complainant to any relief in this court, touching any of the matters therein complained of. The want of proper parties is also assigned for cause of demurrer. The court below did not notice the want of parties, but sustained the demurrer, on the other causes assigned.

The argument addressed to this court has been confined principally to the general question, whether the district court of the United States, in Louisiana, has equity powers; and, if so, what are the modes of proceeding in the exercise of such powers. The great earnestness with which this power has been denied, at the bar, to the district court, may make it proper briefly to state the origin of the district court of that state, and the jurisdiction conferred upon it by the laws of United States. When the constitution was adopted, and the courts of the Union organized, and their jurisdiction distributed, Louisiana formed no part of this Union. It is not rea-

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sonable, therefore, to conclude, that any phraseology has been adopted, with a view to the peculiar local system of laws in that state. She was admitted into the Union, in the year 1812 ; and by the act of congress, passed for that purpose (2 U. S. Stat. 701), it is declared, that there shall be established a district court, to consist of one judge, to be called the district judge, who shall, in all things, have and exercise the same jurisdiction and powers, which, by the act, the title whereof is in this section recited, were given to the district judge of the territory of Orleans. By the act here referred to for the jurisdiction and powers of the court (2 U. S. Stat. 285), a district court is established, to consist of one judge ; and it declares, that he shall, in all things, have and exercise the same jurisdiction and powers which are by law given to, or may be exercised by, the judge of the Kentucky district. And by the judiciary act of 1789 (1 U. S. Stat. 77), it is declared, that the district court in Kentucky shall, besides the jurisdiction given to other district *655] courts, have jurisdiction of all other causes, except of appeals *and writs of error, hereinafter made cognisable in a circuit court, and shall proceed therein in the same manner as a circuit court. And such manner of proceeding is pointed out by the process act of 1792 (1 U. S. Stat. 276), which declares, that the modes of proceeding, in suits of common law, shall be the same as are now used in the said courts, respectively, in pursuance of the act entitled, "an act to regulate process in the courts of the United States," viz., the same as are now used and allowed in the supreme courts of the respective states (1 U. S. Stat. 93), and in suits of equity, and those of admiralty and maritime jurisdiction, according to the principles, rules and usages which belong to courts of equity and courts of admiralty, respectively, as contradistinguished from courts of common law ; subject to such alteration by the courts as may be thought expedient, &c.

From this view of the acts of congress, it will be seen, that prior to the act of 1824, which will be noticed hereafter, 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 the other states. And that in the modes of proceeding, that court was required to proceed 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 adopted by this court.

In the case of *Robinson v. Campbell*, 3 Wheat. 222, it is said, that in some states in the Union, no court of chancery exists, to administer equitable relief. In some of the states, courts of law recognise and enforce, in suits at law, all equitable claims and rights which a court of equity would recognise and enforce ; and in others, all relief is denied, and such equitable claims and rights are to considered as mere nullities at law ; and a construction, therefore, that would adopt the state practice in all its extent, would at once extinguish in such states the exercise of equitable jurisdiction. That the acts of congress have distinguished between remedies at common law and in equity, and that to effectuate the purposes of the *656] legislature, the remedies in the courts of the United States are to be at common law or in equity, not according to practice of the state

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courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles. So also, in the case of the *United States v. Howland*, 4 Wheat. 114, the bill was filed on the equity side of the circuit court of the United States, in Massachusetts, in which state there was no court of chancery; and in answer to this objection, the court say, "as the courts of the Union have a chancery jurisdiction in every state, and the judiciary act confers the same chancery powers on all, and gives the same rule of decision, its jurisdiction in Massachusetts must be the same as in other states."

That congress has the power to establish circuit and district courts in any and all the states, and confer on them equitable jurisdiction, in cases coming within the constitution, cannot admit of a doubt. It falls within the express words of the constitution. "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish." Art. 3. And that the power to ordain and establish, carries with it the power to prescribe and regulate the modes of proceeding in such courts, admits of as little doubt. And, indeed, upon no other ground can the appellee, in this case, claim the benefit of the act of 1824. (4 U. S. Stat. 62.) The very title of that act is, to regulate the mode of practice in the courts of the United States, in the district of Louisiana; and it professes no more than to regulate the practice. It declares, that the mode of proceeding in civil causes, in the courts of the United States, that now are, or hereafter may be, established, in the state of Louisiana, shall be conformable to the laws directing the mode of proceeding in the district courts of said state. And power is given to the judge of the United States court, to make, by rule, such provisions as are necessary to adapt the laws of procedure in the state court, to the organization of the courts of the United States; so as to avoid any discrepancy, if any such should exist, between such state laws and the laws of the United States. The descriptive terms here used, civil actions, are broad enough to embrace cases at law and in equity; and may very fairly be construed, as used in contradistinction to criminal [*657] causes. There are no restrictive or explanatory words employed, limiting the terms to actions at law. They apply equally to cases in equity; and if there are any laws in Louisiana, directing the mode of procedure in equity causes, they are adopted by the act of 1824, and will govern the practice in the courts of the United States. But the question arises, what is to be done, if there are no equity state courts, nor any laws regulating the practice in equity causes. This question would seem to be answered by the cases already referred to, of *Robinson v. Campbell*, and the *United States v. Howland*. And also by the case of *Parsons v. Bedford*, 3 Pet. 444. In the latter case, the court say, "that the course of proceeding, under the state law of Louisiana, could not, of itself, have any intrinsic force or obligation in the courts of the United States organized in that state, except so far as the act of 1824 adopted the state practice; that no absolute repeal was intended, of the antecedent modes of proceeding authorized in the courts of the United States, under the former acts of congress."

If, then, as has been asserted at the bar, there are no equitable claims or rights recognised in that state, nor any courts of equity, nor state laws

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regulating the practice in equity causes, the law of 1824 does not apply to the case now before this court ; and the district court was bound to adopt the antecedent mode of proceeding, authorized under the former acts of congress : otherwise, as is said in the case of *Robinson v. Campbell*, the exercise of equitable jurisdiction would be extinguished in that state ; because no equitable claims or rights which a court of equity would enforce, are there recognised. And there being no court of equity in that state, does not prevent the exercise of equity jurisdiction in the courts of the United States, according to the doctrine of this court in the case of the *United States v. Howland*, which arose in the state of Massachusetts, where there are no equity state courts. We have not been referred to any state law of Louisiana, establishing any state practice in equity cases ; nor to any rules adopted by the district judge in relation to such practice ; and we have some reason *658] to conclude, that no such rules exist. For, in a record now before *us, from that court, in the case of *Sebastian Hiriart v. Jean Gassies Balon* (*ante*, p. 156), we find a set of rules, purporting to have been adopted by the court on the 14th of December 1829, with the following caption : " General rules for the government of the United States court in the eastern district of Louisiana, in civil causes or suits at law, as contradistinguished from admiralty and equity causes, and criminal prosecutions ; made in pursuance of the 17th section of the judiciary act of 1789, and of the first section of the act of congress of the 26th of May 1824, entitled, ' an act to regulate the mode of practice in the courts of the United States for the district of Louisiana.' " And all other rules are annulled ; and these rules relate to suits at law and in admiralty only, and not to suits in equity. From which it is reasonable to infer, that the district judge did not consider the act of 1824 as extending to suits in equity ; and if so, it is very certain, that the demurrer ought to have been overruled. For, according to the ordinary mode of proceeding in courts of equity, the matters stated in the bill are abundantly sufficient to entitle the complainant, both to a discovery and relief ; and by the demurrer, everything well set forth, and which was necessary to support the demand in the bill, must be taken to be true. 1 Ves. sen. 426 ; 1 Ves. jr. 289. And if any part of the bill is good, and entitles the complainant, either to relief or discovery, a demurrer to the whole bill cannot be sustained. It is an established and universal rule of pleading in chancery, that the defendant may meet a complainant's bill by several modes of defence. He may demur, answer and plead to different parts of a bill. So that if a bill for discovery and relief contains proper matter for the one, and not for the other, the defendant should answer the proper, and demur to the improper matter. But if he demurs to the whole bill, the demurrer must be overruled. 5 Johns. Ch. 186 ; 1 Johns. Cas. 433.

But if we test this bill by any law of Louisiana which has been shown at the bar, or that has fallen under our observation, the demurrer cannot be sustained. The objection founded on the alleged want of proper parties, *659] because the heir and *residuary legatee of John A. Fort is not made a party, is not well founded. The bill states, that in the year 1828, after the death of Fort, the defendant, Benjamin Story, took the whole of the property, by some arrangement with the heirs of Fort ; and that he ever since has been, and is now, in the whole possession thereof, and has

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received the rents and profits of the same. This fact the demurrer admits; whereby, Benjamin Story became the sole party in interest.

The causes of demurrer assigned, are general; that the complainant has not, by his bill, made such a case as entitles him, in a court of equity in that state, either to a discovery or relief. In the argument at the bar, there has been no attempt to point out in what respect the bill is defective, either in form or substance, as to the discovery, if it is to be governed by the ordinary rules of pleading in a court of chancery. And if the objection rests upon the want of the right in the complainant to call upon the defendant for any discovery at all, the objection is not sustained even by the laws of Louisiana. But on the contrary, it is expressly provided by a law of that state, that when any plaintiff shall wish to obtain a discovery from the defendant, on oath, such plaintiff may insert in his petition, pertinent interrogatories, and may call upon the defendant to answer them on oath; and that the defendant shall distinctly answer to such interrogatories, provided they do not tend to charge him with any crime or offence against any penal law; neither of which has been pretended in this case. 2 Mart. Dig. 158.

Nor has it been attempted to point out in what respect the bill of complaint is defective, either in form or substance, as to the matters of relief prayed. In this respect also, the bill, according to the ordinary course of proceeding in a court of chancery, is unobjectionable; and indeed, would be amply sufficient in the state courts, under the law of Louisiana, which declares, that all suits in the supreme court shall be commenced by petition, addressed to the court, which shall state the names of the parties, their places of residence, and the cause of action with the necessary circumstances of places and dates; and shall conclude with a prayer for relief adapted to the circumstances of the case. 2 Mart. Dig. 148. These are the essential requisites in an ordinary bill in chancery. It can certainly not be pretended, that it is any objection, in the case before [*660 us, that the bill filed is called a bill of complaint, instead of a petition.

The sufficiency of the objections, therefore, must turn upon the general question, whether the district court of Louisiana has, by the constitution and laws of the United States, the same equity powers, as a circuit court of the United States has, in the other states of the Union; and we think it has been already shown that it has; but that, according to the provisions of the act of 1824, the mode of proceeding in the exercise of such powers, must be conformable to the laws directing the mode of practice in the district courts of that state, if any such exist; and according to such rules as may be established by the judge of the district court, under the authority of the act of 1824. And if no such laws and rules applicable to the case exist in the state of Louisiana, then such equity powers must be exercised according to the principles, rules and usages of the circuit courts of the United States, as regulated and prescribed for the circuit courts in the other states of the Union. The decree of the district court must, accordingly, be reversed; and the cause sent back for further proceedings.

McLEAN, Justice.—The inferior courts of the United States can only exercise jurisdiction under the laws of congress; and a general law giving equity jurisdiction will apply as well to the courts of the United States in

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Louisiana, as in any other state in the Union. The same may be said as to a general law regulating the exercise of a common-law jurisdiction.

But as it regards the courts of the United States in Louisiana, congress have made an exception from the general law, by the act of 1824. This act provides, "that the mode of proceeding in civil causes in the courts of the United States, that now are, or hereafter may be, established in the state of Louisiana, shall be conformable to the laws directing the mode of practice in the district court of the said state : provided, that the judge of any such court of the United States may alter the times limited or allowed for different proceedings in the state *courts, and make, by rule, such other *661] provisions as may be necessary to adapt the said laws of procedure to the organization of such court of the United States ; and to avoid any discrepancy, if any such should exist, between such state laws and the laws of the United States." The proceedings in the state courts of Louisiana are conformable to the civil law ; and the same course of proceeding under the above law, has been adopted in the district court of the United States in that state ; and by the judgment of this court, this course of practice has been sustained.

The above act applies to all civil causes, and, of course, embraces all causes both at common law and in chancery ; and its provisions apply as forcibly to an equitable jurisdiction, as to one exercised in accordance with the rules of the common law. The peculiar mode of procedure under the Louisiana practice, preserves, substantially, the same forms in affording a remedy in all cases. And whether the ground of action be in the principles of the common law, or in the exercise of an equitable jurisdiction, by this mode of proceeding an adequate remedy is given.

In "an act further to regulate process in the courts of the United States," passed in 1828, and which provides for "proceedings in equity, according to the principles, rules and usages which belong to courts of equity," &c., it is declared, that its provisions shall not be extended to any court of the United States in Louisiana. No stronger legislative provision could have been adopted to show that congress did not consider that the "principles, rules and usages which belong to courts of equity," were in force in that state. And this view was, in my opinion, correct, as the law of 1824 had made the federal court practice in Louisiana an exception to the general law on the subject. If the principles, rules and usages, which belong to courts of equity, are to be regarded in the district court of Louisiana, the same principle must adopt, in the same court, the rules and usages which belong to courts of common law. But the latter have been abrogated by the act of 1824, agreeable to the decision of this court ; and it appears to me, this decision must equally apply to the former. If the act of 1824 *662] be *regarded, it must regulate the mode of proceeding in all civil causes, as contradistinguished from criminal ones.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel : On consideration whereof, it is ordered and decreed by this court, that the decree of the said district court in this cause be and the same is hereby reversed ; and that this cause be and the same is

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hereby remanded to the said district court for further proceedings to be had therein, according to law and justice, and in conformity to the opinion and decree of this court.¹

*ELISHA WINN and others, Plaintiffs in error, v. WILLIAM PAT- [*663
TERSON.

Secondary evidence.—Certified copies.—Fraud to avoid a grant of land.

Ejectment for a tract of land in Franklin county, Georgia, held under a grant to Basil Jones, and conveyed by the attorney of Basil Jones to the defendant in error. (See 11 Wheat. 380; 5 Pet. 233.) A copy of the grant was produced in evidence; and a copy of a power of attorney, dated 6th of August 1793, to Thomas Smith, authorizing him to sell the land, executed in the presence of Abram Jones, J. P. and Thomas Harwood; this copy was certified from the records of Richmond county, Georgia, and recorded 11th of July 1795; the original power of attorney was lost, and evidence of the loss, to introduce the copy, was given.

What evidence is sufficient to introduce secondary proof. The deputy-clerk of the Richmond county court, who, as such, had recorded the original power of attorney, testified, that he was well acquainted with Abram Jones, Esquire, and his handwriting, during the year 1793, &c., that the record of the power of attorney from B. Jones to T. Smith, made by himself, while clerk of the court, was a copy of an original power of attorney, which he believed to have been genuine, for that the official signature of Abram Jones must have induced him to commit the same to record; and that the copy of that said power of attorney, the one offered in evidence, had been compared with the record of the original made by himself, and was a true copy. Upon this evidence, the plaintiff offered the copy in evidence, and it was admitted by the circuit court: *Held*, that there was no error in admitting this evidence.

At the time of the admission of this evidence, it was forty years old; Abram Jones, the subscribing witness to the original, was long since dead, and did not appear that the other witness was alive; the original power did not exist, so that no evidence of the handwriting of the other witness could be given. After the lapse of thirty years from the execution of a deed, the witnesses are presumed to be dead; and this is the common ground for dispensing with the production of them, without any search for them, or proof of their death, when the original deed is before the court for proof; this rule applies not only to grants of land, but to all other deeds, where the instrument comes from the custody of the proper party claiming under it, or entitled to its custody. *Patterson v. Winn*, 5 Pet. 233, 244, cited.

The rule is admitted, that a copy of a copy is not evidence; this rule properly applies to cases where the copy is taken from a copy, the original being still in existence; and capable of being compared with it, for then it is a second remove from the original; or when it is a copy of a copy of a record, the record being in existence, and deemed by law as high evidence as the original; for then it is also a second remove from the original. But it is a quite different question, whether it applies to cases of secondary evidence, where the original is lost, and the record of it is not deemed in law as high as the original, or when the copy of a copy is the highest proof in existence (in this case, the power of attorney was recorded in Richmond *county, [*664 and the land in controversy was in Franklin county): *Held*, that this is not the case of a mere copy of a copy, verified as such; but it is the case of a second copy, verified as a true copy of the original.

If a certified copy of a duly-recorded deed is evidence, it is not necessary to produce the original book in which the same was recorded.²

There are cases where grants and securities made contrary to the prohibitions of a statute, in part, are, upon the true construction of the intent of the statute, void *in toto*; but it is very different, in cases standing merely on the common law; and, therefore, at the common law, in order to

¹ For further proceedings in this case, see 11 Pet. 351; 12 Id. 339; and 13 Id. 359.

² A certified copy of an instrument is not evidence, if the law do not authorize it to be recorded. *James v. Gordon*, 1 W. C. C. 333;

Barger v. Miller, 4 Id. 280; *New York Dry-Dock v. Hicks*, 5 McLean 111; *Ormsby v. Tin-gey*, 2 Cr. C. C. 128; *Lemon v. Bacon*, 4 Id. 466; *Kerns v. Swope*, 2 Watts 75.