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trial of the cause ; the prisoner having pleaded guilty, pronouncing judgment by the court was a part of the trial, and the question arose upon a motion of the district-attorney for judgment. It was not a matter resting in the discretion of the court, whether to give judgment or not ; the court was bound, either to pass sentence upon the prisoner, or to discharge him. The point upon which the judges were divided in opinion, did not relate to any matter resting in the discretion of the court, as to the nature or degree of punishment ; but whether the prisoner was punishable at all or not ; and that depended upon a question of law, growing out of the pardon of the prisoner, and in no respect rested in the discretion of the court. We do not mean to decide, definitively, that no question can be brought here upon a certificate of a division of opinion, unless the point arose upon the trial of the cause ; but we are very much induced to think, that such is the true construction of the act : but from the general words used, cases may possibly arise that we do not foresee. The question, however, brought up in the present case, being one resting entirely in the discretion of the court, is clearly not within the act ; and this court cannot, therefore, take cognisance of the question.

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 West Tennessee, and on the point and question on which the judges of the said circuit court were opposed in opinion, and which was certified to this court for its opinion, agreeable to the act of congress in such case made and provided, and was argued by counsel : On consideration whereof, it is the opinion of this court, that it cannot take cognisance of the question certified, the case being one resting entirely in the discretion of the circuit court, and therefore, clearly not within the act of congress of the 29th of April 1802 : whereupon, it is ordered and adjudged by this court, that it be so certified to the said circuit court.

*291] *RICHARD R. KEENE, Plaintiff in error, v. The Heirs of DANIEL CLARK.

Error to state court.

A writ of error was prosecuted to the supreme court of Louisiana, under the 25th section of the judiciary act of 1787, to revise the judgment of that court. The cause was dismissed, as it did not appear, that any question was presented in the court below, within the purview of the act ; the case having been decided upon a collateral matter, independent of, and wholly aside from, any such question.

ERROR to the Supreme Court of the state of Louisiana.

This case was submitted to the court on the record, by *Brent*, for the plaintiff in error.

Afterwards, *Coze*, for the defendant, gave to the court the following statement, in support of a motion to dismiss the suit for want of jurisdiction. This suit was instituted to recover \$10,000, with interest. This was the alleged consideration money paid by Keene, for the conveyance of a tract of land described in the record. The ground of the claim is the cove-

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nant of warranty contained in the deed ; and the eviction of the plaintiff by a paramount title, viz., that of the United States. The only evidence of this eviction was, that the United States caused a survey to be made of this, among other lands. The district court of the state decided, that this survey did not amount to an eviction. This was affirmed in the supreme court.

The present writ of error is directed to the supreme court of Louisiana, by virtue of the 25th section of the judiciary act of 1789. The defendants in error submit, that the decision of the supreme court of Louisiana—that the matter proved, viz., the mere fact that the officers of the United States had surveyed the land in question, does not amount to an eviction, is not a decision against any claim, title or exemption, under the constitution, treaties or laws of the United States, nor in any way within the provisions of the judiciary act.

*STORY, Justice, delivered the opinion of the court.—This is a writ of error to the supreme court of Louisiana, brought here under [*292 the 25th section of the judiciary act of 1789, ch. 20, to revise the judgment of that court. The suit was originally brought by the plaintiff in error, in the state district court, against the defendants in error, as heirs and representatives of Daniel Clark, to recover the purchase-money and interest for a certain tract of land, situate near Baton Rouge, between the rivers Perdido and Mississippi, east and west, and the thirty-first degree of north latitude, and the river Iberville, north and south ; which Clark sold to the plaintiff in error, in 1807, for \$10,000. The petition states, that Clark derived his title thereto from or through a grant of the same from the Spanish government, after the treaty of St. Ildefonso, in the year 1800 ; by which it was ceded to France by Spain ; and that France afterwards, in 1803, ceded it to the United States as a part of Louisiana ; and that in virtue thereof, the United States acquired a just title thereto, and under the acts of congress, have entire possession of the same. And the petitioner refers to certain accompanying documents, marked No. 1 and 2, to prove the sale to him, and the occupation and possession of the United States. The defendants in error pleaded the general issue ; and judgment was given in the state district court for them. The plaintiff in error then carried the same, by appeal, to the supreme court of Louisiana ; and the only point that appears there to have been raised or decided was, whether the plaintiff in error had been evicted from the land, or not.

According to the practice in Louisiana, the opinion of the supreme court is stated on the record. After reciting the state of the pleadings, it proceeds as follows : “ The plaintiff contends, he showed an eviction, as the evidence establishes, that the whole land along the stream, on which the premises are situated, from its source to its mouth, was surveyed by order of the United States. It does not appear to us, that the district court erred. It is true, the surveyors must have necessarily passed near the plaintiff’s land, in effecting the survey. It does not appear to us, that it was occupied, or that any person on it was thereby disturbed. And then, after adverting to the case of *Bessy v. Pintade*, the court added, “ the present case differs from that, in this, that here, the United States have directed an act of ownership over a vast tract of country, some small part of which may well be supposed to have been lawfully possessed and even owned by

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*individuals. This does not appear to us to amount to a denial of title of any of these individuals; much less an eviction in this particular case." This is the whole of the opinion of the court; from which it is apparent, that the judgment did not turn upon any question within the purview of the 25th section of the judiciary act of 1789, ch. 20; but wholly upon a collateral matter, independent of, and wholly aside from, any such question. It was merely a decision, that a public survey, under the authority of the United States, of a large tract of country, including the premises, was not, *per se*, an eviction of the plaintiff in error.

Upon the grounds, therefore, of the doctrine already stated by this court at this term, in the case of *Crowell v. Randell* (*post*, p. 368), the cause must be dismissed for want of jurisdiction.

Writ of error dismissed.

*294] *THOMAS LELAND and CYNTHIA B. LELAND, his wife, LEMUEL HASTINGS, GEORGE CARLTON and ELIZABETH WAITE CARLTON, his wife, WILLIAM JONES HASTINGS, JONATHAN JENKS HASTINGS, LAMBERT HASTINGS, JOEL HASTINGS, HUBBARD HASTINGS and HARRIET MARIA HASTINGS, Plaintiffs, *v.* DAVID WILKINSON.

Private statutes.

Cynthia Jenks, on a petition to the general assembly of Rhode Island, representing that she was the executrix of the last will and testament of Jonathan Jenks, late of Winchester, in the state of New Hampshire, deceased; and that the personal property being insufficient to pay the debts of the estate, she obtained authority from the judge of probate to make sale of so much of the real estate of the deceased as should be necessary to pay the debts; and that under this authority she sold and conveyed certain lands in the state of Rhode Island, as belonging to the estate, and received a part of the consideration-money, and the balance was to be paid when the deed executed by the petitioner should be ratified by the general assembly; the residue of the purchase-money was represented to be absolutely necessary to pay the debts of the estate, and a ratification of the deed, &c., was prayed. In the lower house, June 1792, "it was voted and resolved, that the said petition be received, and that the said deed and the same is hereby ratified and confirmed, so far as respects the conveyance of any right or interest in said estate, mentioned in said deed, which belonged to the said Jonathan Jenks, at the time of his decease;" and in the upper house, this resolve was read the same day, and concurred in. The purchasers, under the deed sanctioned, received all the interest in the premises which had been vested in Jonathan Jenks, and which, on his death, vested in his heirs or devisees; the act of the legislature and the deed are unconditional, and neither the heirs of Cynthia Jenks, nor any other persons can impeach the deed, by evidence of facts prior to the act of confirmation.

The power of the legislature of Rhode Island in relation to the confirmation of such sales of real estate, is greater than the strict judicial power; they may sanction past transactions, where vested rights are not disturbed; while the court can only authorize a title to be made in future.

CERTIFICATE of Division from the Circuit Court of Rhode Island.

The case was submitted to the court, by *Whipple*, for the defendant, on a printed argument. No counsel appeared for the plaintiff.

McLEAN, Justice, delivered the opinion of the court.—The matters in controversy in this case are contained in certain points, on which the judges of the circuit court for the district of *Rhode Island were divided; *295] and which have been certified for decision to this court, under the act of congress.