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pleas, so as aforesaid pleaded by said defendants, are not sufficient in law to bar the said United States of their action aforesaid, against the said defendants ; wherefore, the said United States ought, notwithstanding the pleas aforesaid, to recover their debt and damages on occasion of the premises. And it is further ordered and adjudged by this court, that the cause be remanded to the said circuit court for further proceedings thereon, according to law.

*RICHARD SMITH, Lessee of JOHN LANNING, Plaintiff, v. JOHN VAUGHAN *et al.* [*366]

Certificate of division.

A question whether a plaintiff in ejectment shall be permitted to enlarge the term in the demise, in an action of ejectment, is one within the discretion of the court to which a motion for the purpose is submitted ; and cannot be certified to the supreme court, if the judges of the circuit court are divided in opinion on the motion, under the provisions of the act of congress of the 29th of April 1802.

CERTIFICATE of Division from the Circuit Court of Pennsylvania. At April session 1814, an action of ejectment was commenced by the plaintiff in the circuit court of Pennsylvania ; and after various preparatory proceedings, on the 15th of October 1821, a jury having been impannelled, by agreement of the opposite parties, the term laid in the declaration was enlarged to seventeen years ; and on the 17th of October, 1821, the jury found a verdict for the plaintiff, against Vaughan and others ; on which judgment *nisi* was entered. At October sessions 1826, a *scire facias* to revive the original judgment against Vaughan and others was issued, and after various pleas and demurrers, on the 9th of June 1830, judgment was given for the plaintiff. To April session 1834, of the same court, a writ of *alias scire facias*, issued, at the suit of the same plaintiff, again to revive the original judgment against John Vaughan, Calvin Cone, Timothy Stevens, Oliver Stevens, Joseph Stevens and John Secor, and all other tenants, was returned "made known."

"And upon the plaintiff's motion for leave to enlarge the term, and to issue a writ of *habere facias possessionem*, questions having occurred before the said circuit court, upon which the opinions of the judges were opposed, to wit, whether leave should be granted to the plaintiff to enlarge the term, and to issue the said writ ; the points upon which the disagreement happened were, during the same term, upon the plaintiff's request, thus stated under the direction of the said judges, and certified under the seal of the said court to the supreme court at the next session, to be held hereafter ; in order that it may by that court be finally decided ; the said direction of the justices, being accompanied with this opinion, that this is a *collateral motion to amend, depending on the discretion of the court, under all [*367] the circumstances of the case, as they appear of record, or are disclosed by affidavits ; and in their opinion, does not come within the provisions of the act of 1802 (2 U. S. Stat. 159) ; but as the counsel of the plaintiff think otherwise, and are desirous of taking the opinion of the supreme court on the subject ; the objection to certifying the point of difference will be

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reserved for their consideration ; and the clerk was directed to make out the certificate accordingly."

The clerk of the circuit court, on the 7th day of January 1825, sent up the following certificate with the record. "I certify the foregoing to be a true statement of the points upon which the opinions of the judges of the circuit court of the United States for the district of Pennsylvania, in the third circuit, were opposed; stated under the direction of the said judges."

Ingersoll moved to dismiss the cause, on the ground, that the points certified from the circuit court did not come within the provisions of the act of congress of the 29th of April 1802.

THE COURT ordered it to be certified to the circuit court, as the opinion of the court, that it cannot take cognisance of the question certified, the cause 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.

*368] *THOMAS P. CROWELL, Garnishee of the CHESAPEAKE and DELAWARE CANAL COMPANY, v. JOHN RANDELL, JUN.¹

RICHARD SHOEMAKER, Garnishee of the CHESAPEAKE and DELAWARE CANAL COMPANY, v. JOHN RANDELL, JUN.

Error to state courts.

The 25th section of the judiciary act of 1780 confers appellate jurisdiction on the supreme court from final judgments and decrees in any suit in the highest court of law or equity of a state, in which a decision in the suit could be had, in three classes of cases : first, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity ; secondly, where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such their validity ; thirdly, where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute or commission ; the section then goes on to provide, that no other error shall be assigned or regarded as a ground of reversal, in any such cause as aforesaid, than such as appears upon the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions or authorities in dispute.

In the interpretation of this section of the act of 1789, it has been uniformly held, that to give this court appellate jurisdiction, two things should have occurred and be apparent in the record : first, that some one of the questions stated in the section did arise in the court below ; and secondly, that a decision was actually made thereon, by the same court, in the manner required by the section ; if both of these do not appear on the record, the appellate jurisdiction fails. It is not sufficient to show, that such a question might have occurred, or such a decision might have been made, in the court below ; it must be demonstrable, that they did exist, and were made.

It has been decided, that it is not indispensable that it should appear on the record, *in totidem verbis*, or by direct and positive statement, that the question was made, and the decision given by the court below, on the very point ; but that it is sufficient, if it be clear, from the facts stated, by just and necessary inference, that the question was made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to that judgment.

A review of the cases of *Owings v. Norwood's Lessee*, 4 Cranch 344 ; *Smith v. State of Maryland*, 6 Ibid. 281 ; *Martin v. Hunter's Lessee*, 1 Wheat. 304 ; *Inglee v. Coolidge*, 2 Ibid. 363 ;

¹ This case, in the court of appeals of Delaware, is reported in 1 Harrington 565.