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WAYNE, Justice, agreed with the chief justice in opinion. He *thought the circuit courts of the United States had authority to issue foreign attachments. The decision on that point is not necessary to the decision of this case.

CATRON, Justice, had not formed any opinion on the question of the right of the circuit courts to issue foreign attachments. He thought that question did not come before the court in this case ; and it was not necessary to examine or decide it.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel : On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed, with costs.

*339] **Ex parte* BENJAMIN STORY : In the matter of LOUISE LIVINGSTON, Executrix of EDWARD LIVINGSTON, deceased, *v.* BENJAMIN STORY.

Chancery practice.—Mandamus.—Effect of mandate.

A bill of exceptions is altogether unknown in chancery practice ; nor is a court of chancery bound to inscribe in an order-book, upon the application of one of the parties, an order which it may pass in a case before it.

The court refused to award a *mandamus* to the district judge of the district of Louisiana, commanding him to sign a bill of exceptions tendered to him, and to command him to have inscribed, by the clerk of the court, on the order-book of the court, an order passed by him, in a case which was before him under a mandate from the supreme court of the United States, requiring him to do, and to have done, certain matters to carry into effect the decree of the supreme court, in a case which had been brought before the court by appeal from the district of Louisiana.

At the time when a decree was made in the district court of Louisiana, in a case before it, the complainant was dead ; the executrix was afterwards admitted, by the district court, to become a party to the suit, and prosecuted an appeal to the supreme court, where the decree of the district court was reversed on the merits ; and the case was sent back to the district court on a mandate, requiring the decree of the supreme court to be carried into effect. The decease of the plaintiff, before the decree, and his having left other heirs besides the executrix, was offered in the form of a supplemental answer to the original bill, to the district court, when acting under the mandate of the supreme court, to show error in the proceedings of that court, with a view to bring the case again before the supreme court, in order to have a re-examination and a reversal of the decree of the court ; the district court refused to permit the evidence of the matters alleged to be entered on the records of the court, or to sign a bill of exceptions, stating that the same had been offered. In the case of *Skillern's Executors v. May's Executors*, 6 Cranch 267, it was said, " as it appeared that the merits of the case had been finally decided in this court, and that its mandate required only the execution of the decree, the circuit court was bound to carry that decree into execution, although the jurisdiction of the court was not alleged in the pleadings." in the case now before the court, the merits of the controversy were finally decided by this court, and its mandate to the district court required only the execution of the decree. On the authority of this case, the refusal to allow the defendant to file a supplemental answer and plea, was sustained.

THE case of Louise Livingston, executrix of Edward Livingston, deceased, was before this court, at the January term 1837, on the appeal of Mrs. Livingston, as administratrix, against Benjamin Story, from the district court of the United States for the eastern district of Louisiana. (11 Pet.

*340] 351.) *The decree of the district court of Louisiana was reversed, and the case was sent back to that court on a special mandate from this court.

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Crittenden, for Benjamin Story, now presented to this court a petition, on behalf of Mr. Story, stating: That there was pending against him, in the court of the United States of the ninth circuit, and eastern district of the state of Louisiana, a certain suit in chancery, in the name of Louise Livingston, which suit was originally instituted in the name of Edward Livingston. "That during the present term of the court, your petitioner moved the court to abate or dismiss said cause, upon the ground that Edward Livingston had departed this life, before the rendition of the decree dismissing *this* bill. That upon the hearing of said motion, your petitioner introduced a witness for the purpose of proving the time of the death of Edward Livingston, whose evidence was rejected by the court; to which opinion, an exception was taken, and a bill of exceptions prepared, which stated truly the facts, a copy of which accompanies this petition. Upon its presentation, the judge remarked, that he would sign no bill of exceptions, unless he was convinced he was bound to sign one. Upon being subsequently importuned upon the subject, he stated, if he signed a bill of exceptions, he must give the reasons at length for his opinion. He has been again and again importuned, and unsuccessfully, on the subject. That on this day your petitioner's counsel presented to the court the annexed answer, &c., and desired that it might be placed upon the files in the cause; but the court refused permission to file the same. Thereupon, the annexed bill of exceptions was tendered to the judge, which bill truly stated the facts; but the judge refused to sign the same, or make it a part of the record. The court was then moved to direct the clerk of the court to state the facts upon the order-book; but the court refused to suffer any notice to be taken of this matter, as a part of the proceedings in the court; stating, at the same time, that he considered a *mandamus* to be the true remedy; and alleging no other reason for not signing the bill of exceptions, or suffering notice to be taken of the presentation of the answer on the record. Thus far your petitioner is denied the opportunity of having the *said decisions of the court [*341 revised, or of having the records of the court to speak the whole truth. Your petitioner annexes a full transcript of the proceedings in said case, since it was remanded. Forasmuch as your petitioner is without other remedy, he prays your honorable body to award to him a writ of *mandamus* in nature of a writ of *procedendo*, to compel the judge, the Hon. P. K. Lawrence, to sign said exceptions; and to permit the said record to speak the truth. Your petitioner prays for whatever else in the premises that the circumstances of the case will require."

The facts stated in the petition were verified by an affidavit, by Mr. Chinn, the counsel for the petitioner in the circuit court.

The following is a copy of one of the bills of exception referred to in the foregoing petition:

Livingston)	} On motion to strike the cause from the docket.
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Be it remembered, that on the trial of this motion, the defendant, Story, introduced Henry Carlton as a witness, and offered to prove by him, that Edward Livingston, the former complainant herein, departed this life on the ——— day of ———, and before the trial and decree in this court, at

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the spring term 1836 ; and also, that Edward Livingston left living a daughter and heir, at the time of his death, who is still living. To the admissibility of all of said evidence, the complainants counsel objected, and the court sustained the objection ; and would not permit said witness to be examined, or the testimony of the foregoing facts, or either of them, to be inquired into. To which opinion of the court, the defendant excepted, and prays that his exception may be signed, sealed and enrolled, which is done.

The motion was opposed by *Key*, of counsel for Mrs. Livingston.

TANEY, Ch. J., delivered the opinion of the court :—In this case, a *mandamus* has been moved for, on behalf of Benjamin Story, to the circuit court for the ninth circuit of the eastern district of Louisiana. The facts in the case are as follows :

*342] Edward Livingston, in his *lifetime, filed a bill on the equity side of the district court for the eastern district of Louisiana, against Benjamin Story ; and at the hearing of the cause, the court decided against the complainant, and dismissed the bill. This decree was passed June 3d, 1836. On the 1st of October 1836, Louise Livingston filed a petition in the district court, stating that Edward Livingston had died after the suit was decided, and had by his will appointed her sole executrix ; and praying leave to make herself a party, in order to appeal to this court. A copy of the will of Edward Livingston was filed with this petition, by which it appeared, that she was the sole executrix. Louise Livingston was accordingly permitted to become a party, and by her solicitor appeared in the district court as complainant, in the character of executrix, and appealed to this court ; where the cause was heard, at January term 1837, and the decree of the district court reversed, and the case sent back, with a mandate from this court to the court below, directing the further proceedings to be had in that court.

It appears by the petition for the *mandamus* (which is verified by affidavit), and by the copy of the record from the court below which accompanies it, that the mandate from this court was filed in the district court, March 2d, 1837 ; and proceedings were accordingly had, under the orders of the district court, to carry into execution the directions contained in the mandate. Afterwards, the case having been transferred to the circuit court, under the act of congress creating additional circuits, the defendant, on the 20th of November 1837, obtained a rule on the complainant to show cause why the bill should not be dismissed, or the suit abated, upon the ground, that Edward Livingston, the complainant in the original bill, died before the hearing and decree in the district court in 1836 ; and also, because the suit had not been regularly revived by his executrix, the present complainant, and could not be revived, inasmuch as she claimed as devisee. On the 18th of December 1837, the rule above mentioned was discharged ; and the testimony offered to prove the facts alleged as the foundation of the rule rejected by the court. The defendant, on the day last mentioned, further moved, that he be permitted to give evidence that Edward Livingston had left other heirs besides Mrs. Louise Livingston, which motion was also overruled by the court. The defendant thereupon tendered a bill of exceptions to these

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opinions, but the court refused to sign it. The defendant afterwards prayed leave to file "a supplemental answer and plea," in *which he averred that Edward Livingston, the original complainant, died on the 23d of [*343 May 1836, which was some days before the decree of the district court dismissing his bill; and also averred, that he left a daughter, who was still living, and had an interest in the subject-matter in controversy; and pleaded the death of said Edward Livingston in abatement of the proceedings; and further insisted, that the suit had never been revived by Louise Livingston, who appears as complainant; that the daughter of Edward Livingston was a necessary party; and that the court could not entertain jurisdiction, because she was not a party. The court refused to receive this answer, or to permit it to be filed. The defendant thereupon tendered another bill of exceptions, which the court refused to sign. The defendant then moved the court to direct the clerk to state the facts upon the order-book, but the court refused to suffer any notice to be taken on the record to this proposition to file the supplemental answer and plea; and a *mandamus* is now moved for to compel the judge to sign the exceptions, and to correct the record, so as to make the answer which defendant proposed to file, and the refusal of the court to receive it, appear on the record, as a part of the proceedings.

We think there is no sufficient ground for this application. A bill of exceptions is altogether unknown in chancery practice; nor is a court of chancery bound to inscribe in an order-book, upon the application of one of the parties, an order which it may pass in a case before it; and the facts which the defendant stated in the supplemental answer and plea which he offered, furnished no ground of defence in the circuit court, when acting under the mandate of this court, and carrying its directions into execution. In the case of *Skillearn's Executors v. May's Executors*, 6 Cranch 267, this court said, that as it appeared that the merits of the case had been finally decided in this court, and that its mandate required only the execution of its decree; the circuit court was bound to carry that decree into execution, although the jurisdiction of the court was not alleged in the pleadings. In the case now before the court, the merits of the controversy were finally decided by this court, and its mandate to the district court required only the execution of its decree. The case, therefore, comes within the principle of *Skillearn's Executors v. May's Executors*, and the facts stated by the defendant cannot, in this stage of the proceedings, form any defence against the execution of the mandate; and consequently, he was not deprived of any legal *or equitable ground of defence, by the refusal of the court to suffer [*344 him to file the supplemental answer and plea which he offered. The motion for the rule to show cause is therefore refused.

ON motion for a *mandamus* to the judge of the circuit court of the United States for the eastern district of Louisiana. On consideration of the motion made in this case by Mr. Crittenden, on a prior day of the present term of this court, to wit, on Saturday, the 17th day of February, A. D. 1838, for a writ of *mandamus*, in the nature of a writ of *procedendo*, to compel the judge of the circuit court of the United States for the eastern district of Louisiana to sign the bill of exceptions, tendered to him by the counsel for the appellee in this cause, and to permit the record of the case "to speak the truth,"

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and of the arguments of counsel thereupon had, as well in support of, as against the motion; it is now here ordered and adjudged by this court, that the said motion be and the same is hereby overruled.

*345] *ANDREW HEPBURN, Plaintiff in error, v. JACOB DUBOIS, Lessee of OLIVER S. WALCOTT.

Deed of feme covert.—Effect of verdict in error.

The deed of a *feme covert*, conveying her interest in lands which she owns in fee, does not pass her interest, by force of its execution and delivery, as in the common case of a deed by a person under no legal incapacity; in such cases, an acknowledgment gives no additional effect between the parties to the deed; it operates only as to third persons, under the provisions of recording and kindred laws. The law presumes a *feme covert* to act under the coercion of her husband, unless before a court of record, a judge, or some commissioner, in England, by a separate acknowledgment, out of the presence of her husband, or, in these states, before some court, or judicial officer authorized to take and certify such acknowledgment, the contrary appears.

Where the evidence in a cause conduces to prove a fact in issue before a jury, if it is competent in law for a jury may infer any fact from such evidence, which the law authorizes the court to infer on a demurrer to evidence; after a verdict in favor of either party, on the evidence, he has a right to demand of a court of error, that they look to the evidence, only for one purpose, with the single eye to ascertain whether it was competent in law to authorize the jury to find the facts which made out the right of the party, on a part or the whole of his case. If, in its judgment, the appellate court hold that the evidence was competent, then they must found their judgment on all such facts as were legally inferrible therefrom, in the same manner, and with the same legal results as if they had been definitely set out in a special verdict; so, on the other hand, the finding of a jury on the whole evidence in a cause, must be taken as negating all the facts in which the party against whom their verdict is given, has attempted to infer, or establish, from the evidence. Dubois's Lessee v. Hepburn, 10 Pet. 1, affirmed.

ERROR to the District Court for the Western District of Pennsylvania. This was an action of ejectment, instituted by the defendant in error, for a tract of land, situated in Lycoming county, Pennsylvania, surveyed under a warrant to Joseph Fearon, and patented to him on the 19th September 1796. The case was before the court on a writ of error, prosecuted by the plaintiff in the ejectment, at January term 1836. (10 Pet. 1.)

Joseph Fearon died seised and possessed of this tract of land, at Philadelphia, in April 1810. His heirs and legal representatives were the children of his two brothers, Abel Fearon and William Fearon; both Abel and William having died in the lifetime of Joseph *Fearon. The children of Abel Fearon were Robert Fearon, of the city of Philadelphia, since deceased; Joseph Fearon, of Northumberland county, Pennsylvania; Sarah Fearon, since intermarried with Christopher Scarrow, residing, at the time of the death of Joseph Fearon, in England; Elizabeth Fox, afterwards intermarried with Joseph Fox, then residing in England, and afterwards in Philadelphia. The children of William Fearon were John Fearon, formerly residing in Centre county, Pennsylvania, since deceased; William Fearon, also residing in Centre county; James Fearon, residing in Philadelphia; Sarah Fearon, intermarried with Robert Quay, residing in Lycoming county, Pennsylvania; and Nancy Fearon, intermarried with Samuel Brown, residing in Centre county, Pennsylvania. By deed of partition, dated the 12th and 26th days of March 1825, William's heirs made, on their part, par-