1799, ch. 128, § 65, which declares, that the surety paying a bond for duties shall have and enjoy the like advantage, priority or preference for the receipt of the said moneys out of the effects of the insolvent, as are reserved and secured to the United States. We think, then, that no payment has been made, but that Taylor's funds have been held as a mere special deposit for the indemnity of the government, and to abide the event of the suit; and that to give a different construction to the acts of the officers of the government, would defeat their true objects, as well as the purposes of substantial justice. Upon the whole, we are of opinion that the judgment of the circuit court ought to be affirmed.

The case of Nathaniel Williams and another *v.* United States, which was submitted to the court, upon the argument in *the present case, is far less stringent in its circumstances in favor of the defendants; [*497 and involves far less difficulty. The judgment in that case is also affirmed.

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

---

*De la Fayette Wilcox, Plaintiff in error, *v.* John Jackson, on the demise of Murray McConnel, Defendant in error. [*498

Public lands.—Military reservations.—State legislation.

Ejectment for a tract of land in Cook county, Illinois, being a fractional section, embracing the military post called Fort Dearborn; at the time of the institution of the suit, in the possession of the defendant as the commanding officer of the United States. The post was established in 1804, and was occupied by the troops of the United States, until August 16th, 1812, when the troops were massacred, and the fort taken by the enemy; it was re-occupied by the United States in 1816, and continued to be so held until May 1823, during which time some factory houses, for the use of the Indian department, were erected on it; it was evacuated, by order of the war department, in 1823, and was, by order of the department, again occupied by troops, in 1828, as one of the military posts of the United States; was again evacuated in 1831, the government having authorized a person to take and keep possession of it; it was again occupied by troops of the United States, in 1832, and continued so to be, at the commencement of this suit, being generally known at Chicago to be occupied as a military post of the United States. The buildings about the garrison were not sold in 1831, when it was evacuated, although a great part of the movable property in and about it was sold; in 1817, Beaubean bought of an army contractor, for $1000, a house built on the land; there was attached to the house an inclosure, occupied as a garden or field, of which Beaubean continued in possession until 1836. In 1823, the factory houses on the land were sold by order of the secretary of war, and were bought by Beaubean, for $500; of these he took possession, and continued to occupy them, and to cultivate the land, without interruption by the United States, until the commencement of this suit. The United States, in May 1834, built a lighthouse on the land, and kept twenty acres inclosed and cultivated; the land was surveyed by the government of the United States, in 1821; and in 1824, at the instance of the Indian agent, at Chicago, the secretary of war requested the commissioner of the general land-office to reserve this land for the accommodation and protection of the property of the Indian agency; who, in 1821, informed the secretary of war that he had directed this section of land to be reserved from sale, for military purposes. In May 1831, Beaubean claimed this land, at the land-office in Palestine, for pre-emption; this claim was rejected, and, by the commissioner of the land-office, he was, in February 1832, informed that the land was reserved for military purposes;

this information was also given to others who applied on his behalf. In 1834, he applied for this land, in the office in Danville, and his application was rejected; in 1835, Beaubean applied for the land to the land-office at Chicago, when his claim to pre-emption was allowed; and he paid the purchase-money, and procured the register's certificate; Beaubean sold and conveyed his interest to the plaintiff in the ejectment: *Held*, that Beaubean acquired no title to the land by his entry; and that the right of the United States to the land was not divested or affected by the entry of the land-office at Chicago; nor by any of the previous acts of Beaubean.[1]

The decision of the register and receiver of a land-office, in the absence of fraud, would be conclusive as to the facts, that the applicant for the land was then in possession, and of his cultivating the land during the preceding year; because these questions are directly submitted to those officers. Yet, if they undertake to grant pre-emptions to land, on which the law declares they shall not be granted; then they are acting upon a subject-matter clearly not within their jurisdiction; as much so, as if a court, whose jurisdiction was declared not to extend beyond a given sum, should attempt cognisance of a case beyond that sum.

Appropriation of land by the government is nothing more or less than setting it apart for some particular use. In the case before the court, there was an appropriation of the land, not only in fact, but in law, for a military post, for an Indian agency, and for the erection of a light-house.

By the act of congress of 1830, all lands were exempted from pre-emption which were reserved from sale by order of the president of the United States. The president speaks and acts through the heads of the several departments, in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the
*499] war department; a reservation of lands, made at the request of the *secretary of war for purposes in his department, must be considered as made by the president of the United States, within the terms of the act of congress.[2]

Whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands, and no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, although no other reservation were made of it.

The right of pre-emption was a bounty extended to settlers and occupants of the public domain; this bounty, it cannot be supposed, was designed to be extended to the sacrifice of public establishments, or of great public interests.

Nothing passes a perfect title to public lands, with the exception of a few cases, but a patent; the exceptions are, where congress grants lands, in words of present grant; the general rule applies as well to pre-emptions as to other purchases of public lands.

The act of the legislature of Illinois, giving the right to the holder of a register's certificate of the entry of public lands, to recover possession of such lands in an action of ejectment, does not apply to cases where a paramount title to the lands is in the hands of the defendant, or of those he represents. The exception in the law of Illinois, applies to cases in which the United States have not parted with the title to the land, by granting a patent for it.

A state has a perfect right to legislate as she may please in regard to the remedies to be prosecuted in her courts; and to regulate the disposition of the property of her citizens, by descent devise or alienation; but congress are invested, by the constitution, with the power of disposing of the public land, and making needful rules and regulations respecting it.

Where a patent has not been issued for a part of the public lands, a state has no power to declare any title, less than a patent, valid against a claim of the United States to the land; or against a title held under a patent granted by the United States.

Whenever the question, in any court, state or federal, is, whether the title to property which had belonged to the United States has passed, that question must be resolved by the laws of the United States. But whenever the property has passed, according to those laws, then the property, like all other in the state, is subject to state legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.

The judgment of every tribunal, acting judicially, whilst acting within the sphere of its jurisdiction, where no appellate tribunal is created, is final; and even where there is such an appellate power, their judgment is conclusive, where it only comes collaterally in question, so long

---

[1] See United States *v.* Fitzgerald, 15 Pet. 407.

[2] Wolsey *v.* Chapman, 101 U. S. 755.

as it is unreversed. But directly the reverse is true, in relation to the judgment of any court, acting beyond the pale of its authority. This principle is concisely and accurately stated by this court in the case of Elliott *v.* Peirsol, 1 Pet. 340.

Jackson *v.* Wilcox, 2 Ill. 344, reversed.

ERROR to the Superior Court of the state of Illinois. In the circuit court of Cook county, in the state of Illinois, an action of ejectment was commenced, in February 1836, by John Jackson, on the demise of Murray McConnel, against De la Fayette Wilcox, for the recovery of a part of the military post of Fort Dearborn, at Chicago, in the state of Illinois ; the defendant being then in possession of the premises, as the commander of the post. The defendant appeared, and after the usual pleadings, the cause was brought to trial in October 1836, and submitted to the court on an agreed statement of facts, which was to be taken as if found as a special verdict.

The premises sued for were part of fractional section 10, in township 39 north, of range 14 east of the third principal meridian, in the county of Cook, and state of Illinois ; and embraced the military post called Fort Dearborn, of which post, at the time of the bringing of this suit, and the service of the declaration therein, the said defendant, De la Fayette Wilcox, was in the possession, *and was the commanding officer under the authority of the United States ; which post was established by the [*500 United States in 1804, and was thereafter occupied by the troops of the United States, till August 16th, 1812, when the troops were massacred, and the post taken by the enemies of the country. It was re-occupied by the troops, on the 4th of July 1816 ; in which year, the United States caused to be built upon the fractional section, No. 10, T. 39 N., R. 14 east, some factory houses for the use of the Indian department. The troops continued to occupy the post until the month of May 1823, when it was evacuated by order of the government, and was left in possession of Dr. A. Wolcott, Indian agent at Chicago. On the 19th of August, in the year 1828, the military post was again occupied by the troops of the government, acting under the order of the secretary of war, as one of the military posts of the United States. The post was again evacuated by the troops of the government, in the month of May 1831, though the government never gave up the possession of the military post, called Fort Dearborn ; but left the same in the possession of one Oliver Newberry, who authorized George Dole to take and keep the same in repair ; which said Dole accordingly did. Said post was again occupied by the troops of the government, in June 1832, under the command of Major Whistler, an officer in the army of the United States. At the time Major Whistler took possession, being at the time of the war with the Sac and Fox Indians, several hundred persons were in the fort for security against the Indians. The military post had been occupied by the troops, and was generally known at Chicago to be so occupied, from that date up to the commencement of this suit, and was still used for that purpose.

When the military post was evacuated in 1831, the quartermaster at the post, acting under orders, sold a greater part of the movable property, in and about the garrison, belonging to the government, but sold none of the buildings belonging to the military post. In the year 1817, John Baptiste Beaubean bought of one John Dean, who was an army-contractor at the post, a house built upon said land, by the said Dean, and gave him therefor

$1000 ; attached to the house was an inclosure used and occupied by said Dean, as a garden and field, and Mr. Beaubean then took possession of the house and inclosure, and continued in possession, cultivating a part of the inclosure every year, from the year 1817 to the 17th of June 1836. In 1823, the factory houses built at the post, upon the tract of land, were, by order of the secretary of the treasury, sold, and Capt. Henry Whiting became the purchaser thereof. In the same year, Whiting sold said improvements to the American Fur Company, and the company, for the sum of $500, sold to said Beaubean, who took possession thereof, and continued to occupy the same, together with a part of the quarter section of land, to the *date
*501] of the commencement of this suit. Mr. Beaubean continued to occupy said houses and inclosure upon the land, and to cultivate a part of the land, unmolested and undisturbed by any person whatever, from the year 1817 up to the day of the commencement of this suit. The land in question was surveyed by the government in the year 1821.

After the military post was re-occupied by the United States troops in 1832, as before stated, to wit, before the first day of May 1834, the United States built a lighthouse upon part of the land, and had kept constantly inclosed and cultivated, for the use of the said garrison, at least twenty acres of said land. The United States troops, by order and consent of the government, had also used and occupied various other government lands near and adjoining the quarter section of land.

On the 2d of September 1824, Dr. A. Wolcott, Indian agent, then stationed at Chicago, wrote the following letter to the secretary of war of the United States, to wit :

"Fort Dearborn, Chicago, Sept. 2, 1824.

"Sir :—I have the honor to suggest to your consideration, the propriety of making a reservation of this post, and the fraction on which it is situated, for the use of this agency. It is very convenient for that purpose, as the quarters afford sufficient accommodation for all the persons in the employ of the agency, and the storehouses are safe and commodious places for the provisions and other property that may be in charge of the agent. The buildings and other property, by being in possession of a public officer, will be preserved for public use, should it ever be necessary to occupy them again with a military force. As to the size of the fraction, I am not certain, but I think it contains about sixty acres ; a considerable greater tract than that is under fence ; but that would be abundantly sufficient for the use of the agency, and contains all the buildings attached to the fort, such as a mill, barn, stable, &c., which it would be desirable to preserve. I have the honor to be, &c., Alexander Wolcott, Jun.,

Hon. J. C. Calhoun, Secretary of War. Indian Agent."

Which letter John C. Calhoun, then secretary of war of the United States, on the 30th of September 1824, inclosed with the following note to George Graham, Esq., commissioner of the general land-office of the United States.

"Department of War, 30th Sept. 1824.

"Sir :—I inclose herewith a copy of a letter from Dr. Wolcott, Indian agent at Chicago, and request you will direct a reservation to be made for

the use of the Indian department at that post, agreeably to his suggestions. I have the honor to be, &c. J. C. CALHOUN."

"GEORGE GRAHAM, Esq.,
Commissioner of the General Land-Office, Treasury Department."

*And thereupon, on the first day of October 1824, George Graham then commissioner of the land-office, addressed a letter in reply, to the [*502 secretary of war, at the same time subjoining to the letter of the said secretary of war, this note, to wit: "Answered the first of October 1824, and the frac. sec. 10, T. 39 N., R. 14 E., colored and marked on the map, as reserved for military purposes." The letter in reply was as follows, to wit:

"General Land-Office, 1st of October 1824.

"Sir:—In compliance with your request, I have directed that the fractional section 10, Township 39 N., R. 14 E., containing 57.50 acres, and within which Fort Dearborn is situated, should be reserved from sale for military purposes. I am, &c. GEORGE GRAHAM."

"HON. J. C. CALHOUN, Secretary of War."

Which fractional section, mentioned in the foregoing letter of George Graham, embraced the premises sued for, and Fort Dearborn, occupied by the United States as aforesaid.

After the writing and receipt of the letters aforesaid, to wit, on the 29th day of May 1830, congress passed a law granting the right of pre-emption upon the public lands to every person who cultivated any part of a quarter section of said land in 1829, and was in the actual possession thereof, on the 29th day of May 1830; but which pre-emption right did not extend to any land which was reserved from sale by act of congress, or by order of the president, or which might have been appropriated for any purpose whatsoever, or for the use of the United States, or either of the states in which any of the public lands might be situated. Mr. Beaubean having cultivated a part of F section, in 1829, and having been in possession of a part so cultivated, on the 29th day of May 1830; on the 7th day of May 1831, made application to the register and receiver of the United States land-office, at Palestine, in Illinois, and offered to prove a pre-emption upon the land, and purchase the same at private sale, under the pre-emption law, which claim of pre-emption upon the land was not, by the register and receiver, at Palestine, allowed to Mr. Beaubean.

One Robert Kenzie, on the 7th day of May 1831, made application to the register and receiver of the land-office, to be allowed to enter at private sale a part of the same fractional section 10; and the claim by the said register and receiver was then passed and allowed, and Robert Kenzie was then permitted to enter at private sale, under the pre-emption law, the north fraction of fractional section ten.

After the application of Mr. Beaubean to the register and receiver, at Palestine, as aforesaid, to wit, on the 7th and 12th of May 1831, Joseph Kitchell, then register of the land-office, addressed letters to Elijah Hayward, Esq., then commissioner of the general land-office of the United States, informing him of the application of the said Beaubean to enter said S. W. F section 10, *town. 39 north, of range 14 east, under the pre-emption act; and on the 2d of November 1831, Mr. Beaubean addressed a [*503

letter to the said Hayward, commissioner, &c., stating that in the month of May preceding, he had filed in the office at Palestine aforesaid, proof of his right of pre-emption to the land, and insisting, that he was entitled to have the claim allowed ; and in answer thereto, was informed by the commissioner, by letter, dated the 2d of February 1832, that said south-west quarter of said fractional section ten, T. 39 N., R. 14 E., was reserved for military purposes. On the 1st of October 1824, several other persons, in behalf of said Beaubean, after his application as aforesaid, prior to the said 2d of February 1832, made inquiry by letter of said commissioner touching the same, and were informed by the commissioner that the tract of land had been reserved for military purposes, and said Beaubean's application as aforesaid was rejected.

Afterwards, to wit, on the 19th day of June 1834, congress passed an act to revive the pre-emption law of the 29th of May 1830, by the first section of which act was provided, that every settler or occupant of the public lands, prior to the passage of that act, who was then in possession, and cultivated any part thereof, in 1833, should be entitled to all the benefits and privileges of the act, entitled an act to grant pre-emption rights to settlers on public lands, approved 29th May 1830, and the act was hereby revived, and should continue in force two years from the passage of this act and no longer ; and Mr. Beaubean having cultivated a part of the fractional quarter of section ten, in 1833, and having been in the actual possession and occupancy of the part, so by him cultivated, on the 19th day of June 1834, the day of the passage of the last-recited law, did, in the month of July 1834, apply to the register and receiver of the United States land-office at Danville, in Illinois, for leave to prove a pre-emption, and enter the fractional quarter, under the last-recited act ; which application and claim of Beaubean was rejected by the said register and receiver at Danville aforesaid, who informed Beaubean that said land was reserved for military purposes.

After the writing of the letters by Dr. Wolcott, Indian agent, and J. C. Calhoun, secretary of war, and George Graham, commissioner of the general land-office, above before referred to and set forth, to wit, on the 26th day of June 1834, congress, by a law approved upon that day, created two additional land-districts in Illinois ; one called north-west and the other the north-east land districts of the state of Illinois, and the last-mentioned district included the land in controversy. By the fourth section of said act, it was provided, that the president should be authorized, as soon as the survey should be completed, "to cause to be offered for sale, in the manner prescribed by law, all the lands lying in said land district, at the land-offices in the respective districts in which the lands so offered is embraced, reserving only section sixteen in each township, the tract reserved for the village of Galena ; such other tracts as have been granted to individuals
*504] *and the state of Illinois, and such reservation as the president shall deem necessary to retain for military posts ; any law of congress heretofore existing to the contrary notwithstanding." It was further provided by said act, that there "shall be established in each of said land-districts a land-office, at such time and place as the president may deem necessary ;" and a land-office was established in said north-east land district, before the 1st of May 1835, which is the land-office at Chicago. After the passage

of this act, and after the land-office aforesaid was established, the president of the United States, on the 12th day of February 1835, made and published his proclamation, directing various lands in said north-eastern land district to be sold at said land-office at Chicago. Among said lands so proclaimed for sale, is the said fractional section 10, in town. 39 N., R. 14 E., unless the same was excepted by the general exception in said proclamation, in the words following, to wit: "The lands reserved by law for the use of schools, and for other purposes, will be excluded from the sale."

The lands were directed by the proclamation to be sold at Chicago land-office aforesaid, on the 15th day of June 1835, and before the said 15th day of June, to wit, in the month of April 1835, the commissioner of the general land-office caused to be transmitted to said land-office at Chicago the extended plat of the land in the said proclamation mentioned, marking and coloring upon said plat certain lands to be reserved from sale; but neither the fractional section 10, nor any of the divisions thereof, were so marked or colored to be reserved from sale.

At the bottom of the president's proclamation was a general notice requiring all persons who claimed the right of pre-emption to any of the lands in the proclamation mentioned, to appear before the register and receiver of the land-office, before the day appointed by said proclamation for the sale of said lands, and prove their pre-emption; and after the notice, the said John Baptiste Beaubean did, on the 28th day of May 1835, appeared before the register and receiver of the land-office at Chicago, there proved to the satisfaction of the said register and receiver, that he was entitled to the right of pre-emption to the said south-west fractional quarter of fractional section ten, and Mr. Beaubean did, on the 28th day of May 1835, enter and purchase at private sale, of the United States and of the register of said land-office, the south-west fractional section ten, and then and there paid to the receiver of said land-office one dollar and twenty-five cents per acre, in full payment for said land, and obtained from the receiver aforesaid the following receipt, to wit:

"Land Office, at Chicago, Illinois, 28th May 1835.

"Pre-emption Act, 19th June 1834.

No. 6. Received of John Baptiste Beaubean, of Cook county, Illinois, the sum of ninety-four dollars and sixty-one cents, being in *full payment for the south-west fractional quarter of section No. 10, in township No. 39 north, of range No. 14 east of the third principal meridian, containing seventy-five acres and sixty-nine hundredths of an acre, at the rate of $1.25 per acre. [*505

E. D. Taylor, Receiver.

$94 61.—Michigan paper."

Mr. Beaubean also obtained from the register of the last-mentioned land-office a certificate, in the words and figures following, to wit:

"Land Office at Chicago, Illinois, May 28th, 1835.

"No. 6. It is hereby certified, that, in pursuance of law, John Baptiste Beaubean, of Cook county, state of Illinois, on this day purchased of the register of this office, the lot or south-west fractional quarter of section number ten, in township number 39 north, of range fourteen east, containing seventy-five and sixty-nine hundredths acres, at the rate of one dollar

and twenty-five cents per acre, amounting to ninety-four dollars and seventy-five cents, for which the said John Baptiste Beaubean has made payment in full, as required by law. Now, therefore, be it known, that on the presentation of this certificate to the commissioner of the general land-office, the said John Baptiste Beaubean shall be entitled to receive a patent for the lot above described. JAMES WHITLOCK, Register."

"Pre-emption act, 1834."

Which certificate was presented to the commissioner of the general land-office, and filed in the office.

Afterwards, to wit, on the 4th day of March 1836, the register of the said land-office at Chicago made, signed, and delivered to Mr. Beaubean his certificate, in the words and figures following, to wit:

"Land-Office Chicago, Illinois.

"I, James Whitlock, register of the land-office at Chicago, in the state of Illinois, do hereby certify, that John Baptiste Beaubean, of the town of Chicago, and state of Illinois, did, on the 28th day of May, in the year of our Lord 1835, under and by virtue of an act of congress, passed on the 19th day of June 1834, entitled, "an act to revive an act granting pre-emption rights to settlers on the public lands, passed the 29th day of May 1830, prove to the satisfaction of the register and receiver, that the said Beaubean was entitled to the right of pre-emption, under said act of the 19th of June 1834, to the south-west fractional quarter of fractional section number ten, in township 39 north, of range number fourteen east, and the said Beaubean did then enter and purchase of the United States, and of the register of said office, the said south-west fractional quarter of fractional section number ten, in township thirty-nine north, of range number fourteen east, and the said Beaubean did then enter and purchase of the United States, and of the register of said office, the said south-west fractional quarter of fractional section number ten, in township number thirty-nine north, of range number fourteen east of the third principal meridian, situated in the district of lands offered for sale at the land-office at Chicago aforesaid, and
*506] is included in the north-east *land-district of the state of Illinois, which tract of land contains seventy-five acres and sixty-nine hundredths of an acre; for which tract of land he, the said Beaubean, paid the sum of ninety-four dollars and sixty-one cents, being one dollar and twenty-five cents per acre, in full payment for the same. All of which appears by the papers on file in said land office, and by the maps, plats and records of said office now here. Given under my hand, as register as aforesaid, at the land-office aforesaid, this 4th day of March, in the year of our Lord 1836.

JAMES WHITLOCK, Register."

Afterwards, to wit, on the 2d day of July 1836, congress passed an act entitled an act to confirm the sales of public lands in certain cases: by the second section of which, it was provided, that "in all cases where any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the treasury department, and the proceedings have been in all other respects fair and regular, such entries and sales are hereby confirmed, and patents shall be issued thereon as in other cases."

It was admitted, that the defendant, Wilcox, at the commencement of

this suit, and at the time of the service of the declaration in ejectment therein, was in the occupancy and possession of the premises in said declaration mentioned, which was a stockade of pickets, including some wooden buildings in which the soldiers and officers resided, and that the rents and profits of said premises then, and still were of the value of three dollars per month. It was also admitted, that said defendant Wilcox then and still was an officer in the United States army, and was ordered into possession and command of the military post on the premises, together with the United States troops under his command, by order of the secretary of war of the United States; and that said Wilcox claimed no right of ownership in himself to the land, but was in possession of and occupied the same, not in his own right, but as an officer of the army of the United States only, in the command of the post, acting under order of the secretary of war, and of his superior officer, and of the United States.

After the purchase of the said land by Mr. Beaubean, as before stated, to wit, on the sixth day of February 1836, he, the said Beaubean, by deed duly executed, acknowledged and recorded, according to the laws of the said state of Illinois, for and in consideration of the sum of ——— dollars, therein expressed, sold and conveyed the said premises in the declaration mentioned to Murray McConnel, the lessor of the plaintiff; who purchased with a knowledge that a controversy existed between Mr. Beaubean and the government about said land.

It was further admitted, that after the purchase of the land by J. B. Beaubean, as before stated, Elijah Hayward, Esq., then commissioner of the general land-office, on the 31st of July 1835, addressed a letter to the register and receiver of the land-office *at Chicago, stating that it had been represented to the department that the land-officers at Chicago had [*507 permitted to be sold said south-west fractional section ten, T. 39 N., R. 14 E., including the site of Fort Dearborn, and informing them, that such sale was invalid, in consequence of the reservation and appropriation of said fraction for military purposes, since the year 1824, and directing the receiver to refund to Mr. Beaubean the amount of the purchase-money paid thereon, which money was tendered by the receiver to Mr. Beaubean, who refused to receive the same.

On the 23d of January, in the year 1834, Elijah Hayward, then commissioner of the general land-office, addressed a note to the Hon. Lewis Cass, then secretary of war of the United States, inclosing a copy of the letter of the 30th of September 1824, from the then secretary of war, Mr. Calhoun, requesting that said tract of land at Chicago, upon which Fort Dearborn was situated, might be reserved for the Indian department, and a copy of the commissioner Graham's reply, of the 1st of October 1824, before set forth, stating that he had directed the land to be reserved for military purposes, and after stating that the tract of land in question, designated as fractional section ten, T. 39 N., R. 14 E., was claimed under the act of congress, granting pre-emption rights; and Mr. Commissioner Hayward then requested said Secretary Cass to advise the office, whether it was then (to wit, on the 23d of January 1834), needed by the war department, and if so, whether it is considered a military reservation, or as a reservation for the use of the Indian department; and on the 21st of March 1834, the secretary of war addressed a letter, in answer to the inquiry of the commissioner, informing

him that the reservation at Chicago, alluded to in the letter of the commissioner, of the 23d January 1834, was wanted, and was actually used for military purposes.

It was admitted, that various persons, from time to time, had resided upon the fractional quarter section ten, as well as Mr. Beaubean, but all those persons were all, in some way, connected with the army, and acting under the command of the United States' officers; and that one Samuel T. Brady (who was a settler at said military post), in June 1835, presented his claim to the right of pre-emption to the land, before the register and receiver of the said land-office at Chicago, but which claim was rejected by the land-officers, or never acted upon by them.

All the facts above stated were admitted to be true; but they are not admitted to be evidence in the cause, unless the court should be of opinion, upon the hearing of the case, that the facts, or any of them, would be admissible as evidence, if offered in evidence by one party, and objected to by the other, upon the trial of the cause before a jury.

It was agreed, that if the court should be of opinion, upon the hearing of the case, that the law of the case was with the plaintiff, a judgment should be rendered, that he recover its term aforesaid; and that he have his writ of possession, &c., and that a judgment be rendered *against the defendant, in favor of the plaintiff, for the use of the said lessor, for the amount of the rents and profits in the said plaintiff's declaration mentioned, together with his costs. But should the court be of opinion, that the law of the case was with the defendant, then the plaintiff should take nothing by his suit, and a judgment should be rendered against the lessor of the plaintiff, for the costs of this suit. Each party retained the right to remove the cause to the supreme court of the state of Illinois, by appeal or writ of error.

*508]

The judge of the circuit court of Illinois gave judgment for the defendant; and an appeal was taken to the supreme court of Illinois, by which court, the judgment of the circuit court was reversed, and judgment entered for the plaintiff below. To reverse this judgment, this writ of error was sued out, at the instance of the United States; they being the parties interested in the case.

The case was argued by *Butler* and by *Grundy*, Attorney-General, for the plaintiffs; and by *Key* and *Webster*, for the defendant.

For the *plaintiff* in error, it was contended:—

I. Even if it be admitted, that Beaubean was entitled to right of pre-emption, and that the sale and the certificates thereof were properly made to him; still the plaintiff cannot recover in this suit. 1. On the true construction of the several acts of congress applicable to the case, a patent is necessary to the completion of the legal title, and nothing short of it can, as against the United States, defeat their title in an action of ejectment. 2. The plaintiff can derive no aid from the law of Illinois, referred to in the opinions of the courts below; because that law, if it attempts to make the certificate of the register of the land-office evidence of title, as against the United States, is repugnant to the ordinance of 1787; to the constitu-

tion of the United States ; and to the acts of congress for the disposal of the public lands ; and is, therefore, null and void.

II. The land-officers at Chicago had no jurisdiction or authority to allow, or act on, the pre-emption claim of Beaubean ; and the entry and pretended purchase by him were, therefore, as against the United States, utterly null and void : 1. Beaubean's possession and occupancy were subject to the control of the officers and troops of the United States stationed at Fort Dearborn ; and therefore, he could not acquire, within the meaning of the acts of congress, a pre-emption right to any part of the premises. 2. The premises in question were withdrawn from the general operation of the pre-emption and other laws, by the act of congress of March 3d, 1819, "to authorize the sale of certain military sites." *3. If not so withdrawn, they were yet excepted from the pre-emption laws of the 29th of [*509 May 1830, and the 19th of June 1834 ; because reserved and appropriated, or at least appropriated, for use of the United States, within the meaning of those acts. 4. The act of June 26th, 1834, creating additional land-districts, gives no right of pre-emption ; and the plaintiff can, therefore, derive no title therefrom ; and the premises were also excepted from that law, because reserved, within the meaning thereof, as necessary to be retained for a military post.

Barbour, Justice, delivered the opinion of the court.—This is a writ of error to the supreme court of the state of Illinois, prosecuted under the 25th section of the judiciary act of 1789. It was an action of ejectment, brought by the defendant in error against the plaintiff in error. From an agreed case stated in the record, the following appear to be the material facts upon which the questions to be decided arise.

The land in question is part of fractional section 10, in township 39 north, of range 14 east of the third principal meridian, in the county of Cook, and state of Illinois ; and embraces the military post called Fort Dearborn, of which post, at the time of bringing the suit, Wilcox was in possession, as the commanding officer of the United States ; which post was established by the United States in 1804, and was thereafter occupied by the troops of the United States States, until the 16th August 1812, when the troops were massacred, and the post taken by the enemy. It was re-occupied in 1816, when the United States built upon said fractional section some factory houses for the use of the Indian department. The troops continued to occupy it until May 1823, when it was evacuated by order of the government, and was left in possession of the Indian agent at Chicago. In August 1828, it was again occupied by the troops, acting under the orders of the secretary of war, as one of the military posts of the United States. It was again evacuated by the troops, in May 1831 ; but the government never gave up possession of it, but left it in possession of one Oliver Newberry, who authorized a certain George Dole to take and keep it in repair ; which he accordingly did. It was again occupied by the troops of the government, in June 1832, under command of an officer of the army of the United States. It has been occupied by the troops, and was generally known at Chicago to be so occupied, from that time up to the commencement of the suit ; and was, at the time of the trial, still used for that purpose. When it was evacuated in 1831, the quartermaster at the post, acting under orders,

sold the greater part of the movable property in and about the garrison, belonging to the government, but sold none of the buildings. In the year 1817, John B. Beaubean bought of one John Dean, who was an army contractor at the post, a house built upon the land by Dean, at the price of $1000 ; there was attached to the house an inclosure occupied by Dean as a garden and field ; Beaubean then took possession *of the house and inclosure, and continued in possession, cultivating a part of the inclosure every year, from 1817 to 1836. In 1823, the factory houses on the land at said post were sold by order of the secretary of the treasury, which, after an intermediate sale, were bought by Beaubean, at $500 ; who took possession, and continued to occupy the same, together with a part of the quarter section of land, until the commencement of this suit. Beaubean continued to occupy the houses and inclosure, and to cultivate a part of the land, without interruption, from 1817 to the commencement of this suit. The land was surveyed by government in 1821. Since it was re-occupied by the troops in 1832, and before the 1st of May 1834, the United States built a lighthouse on part of the land, and have kept at least twenty acres constantly inclosed and cultivated for the use of the garrison. In the year 1824, at the instance of the then Indian agent at Chicago, who suggested that it would be convenient for the accommodation of the persons and protection of the property of the agency, the secretary of war requested the commissioner of the general land-office to direct a reservation to be made for the use of the Indian department at that post ; and in October 1824, the commissioner answered, saying that he had directed the section now in question to be reserved from sale, for military purposes. In May 1831, Beaubean made a claim for pre-emption of the land in question, at the land-office in Palestine, which was rejected. In February 1832, in answer to a letter from Beaubean on the subject, the commissioner of the general land-office informed him, that the land in question was reserved for military purposes. The same information was given to others who made application in behalf of Beaubean. In 1834, he made claim for a pre-emption in the same, at the Danville land-office, which was also rejected. In 1835, Beaubean applied to the land-office at Chicago, when his claim to pre-emption was allowed ; and he paid the purchase-money, and procured the register's certificate thereof. Wilcox went into and continued in possession, claiming no right of ownership ; but as an officer of the United States only, in command of said post, acting under the orders of the secretary of war, his superior officer, and the United States. Beaubean sold and conveyed his interest to the lessor of the plaintiff.

*510]

Upon this state of facts, two questions arise, which, in our opinion, embraces the whole merits of the case ; and which we will now proceed to examine. The first is, whether, under the facts of the case, and the law applying to them, Beaubean acquired any title whatsoever to the land in question? The second is, whether if he did acquire any title at all, is it such an one as will enable the lessor of the plaintiff to recover in this action?

As to the first question. The ground of the claim is the right of Beaubean as a settler, to a pre-emption, under the act of the 19th June 1834, entitled, "an act to revive an act granting pre-emption rights to settlers on the public lands, passed 29th of May 1830." Now, as this act gives to the

persons claiming under it the benefits *and privileges provided by the act of 1830, which it revives, we must look to this last act, in order to ascertain what are those benefits and privileges, or, in other words, what is the character of the pre-emption right thus claimed, and on what lands the claim is allowed to operate. It authorizes every settler or occupant of the public lands, under the circumstances therein stated, to enter with the register of the land-office in which the land lies, by legal sub-divisions, a quantity of land, not exceeding a quarter section, subject to the following limitations and restrictions: "That no entry or sale of any land shall be made under the provisions of the act, which shall have been reserved for the use of the United States, or either of the several states, or which is reserved from sale by act of congress, or by order of the president, or which may have been appropriated for any purpose whatsoever."

Before we proceed to inquire whether the land in question falls within the scope of any one of these prohibitions, it in necessary to examine a preliminary objection which was urged at the bar, which, if sustainable, would render that inquiry wholly unavailing. It is this: that the acts of congress have given to the registers and receivers of the land-offices the power of deciding upon claims to the right of pre-emption; that upon these questions they act judicially; that no appeal having been given from their decision, it follows as a consequence, that it is conclusive and irreversible. This proposition is true, in relation to every tribunal acting judicially, whilst acting within the sphere of its jurisdiction, where no appellate tribunal is created; and even when there is such an appellate power, the judgment is conclusive, when it only comes collaterally into question, so long as it is unreversed. But directly the reverse of this is true, in relation to the judgment of any court acting beyond the pale of its authority. The principle upon this subject is concisely and accurately stated by this court in the case of *Elliott* v. *Peirsol*, 1 Pet. 340, in these words: "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities; they are not voidable, but simply void." Now, to apply this. Even assuming that the decision of the register and receiver, in the absence of fraud, would be conclusive as to the facts of the applicant then being in possession, and his cultivation during the preceding year, because these questions are directly submitted to them; yet if they undertake to grant pre-emptions in land in which the law declares they shall not be granted, then they are acting upon a subject-matter clearly not within their jurisdiction; as much so as if a court, whose jurisdiction was declared not to extend beyond a given sum, should attempt to take cognisance of a case beyond that sum.

We now return to the inquiry, whether the land in question falls within any of the prohibitions contained in the act of congress. Amongst others, lands, which may have been appropriated for any purpose *whatsoever, are exempt from liability to the right of pre-emption. Now, [*512 that the land in question has been appropriated, in point of fact, there can be no doubt, for the case agreed states that it has been used from the year 1804, until and after the institution of this suit, as well for the purpose of a military post, as for that of an Indian agency, with some occasional interrup-

tion. Now, this is appropriation, for that is nothing more nor less than setting apart the thing for some particular use. But it is said, that this appropriation must be made by authority of law. We think that the appropriation in this case, was made by authority of law. As far back as the year 1798, see act of May 3d, of that year (1 U. S. Stat. 554), an appropriation was made for the purpose, amongst other things, of enabling the president of the United States to erect fortifications in such place or places as the public safety should, in his opinion, require. By the act of 21st of April 1806 (2 Ibid. 402), the president was authorized to establish trading houses at such posts and places, on the frontiers, or in the Indian country, on either or both sides of the Mississippi river, as he should judge most convenient for carrying on trade with the Indians. And by act of June 14th, 1809, he was authorized to erect such fortifications as might, in his opinion, he necessary for the protection of the northern and western frontiers. We thus see, that the establishing trading houses with the Indian tribes, and the erection of fortifications in the west, are purposes authorized by law; and that they were to be established and erected by the president. But the place in question is one at which a trading house has been established, and a fortification or military post erected. It would not be doubted, we suppose, by any one, that if congress had by law directed the trading house to be established and the military post erected, at Fort Dearborn, by name; that this would have been by authority of law. But instead of designating the place themselves, they left it to the discretion of the president, which is precisely the same thing in effect. Here then is an appropriation, not only for one but for two purposes, of the same place, by authority of law. But there has been a third appropriation in this case, by authority of law. Congress, by law, authorized the erection of a lighthouse at the mouth of Chicago river, which is within the limits of the land in question, and appropriated $5000 for its erection; and the case agreed states, that the lighthouse was built on part of the land in dispute, before the 1st of May 1834. We think, then, that there has been an appropriation, not only in fact but in law.

There would be difficulty in deciding to what extent this appropriation reached, if there were not materials furnished by the record which reduce it to precision. At the request of the secretary of war, the commissioner of the general land-office, in 1824, colored and marked upon the map this very section, as reserved for military purposes, and directed it to be reserved from sale for those purposes. We consider this, too, as having been done by authority of law; for amongst other provisions in the *act of 1830, all hands are exempted from pre-emption, which are reserved from sale by order of the president. Now, although the immediate agent, in requiring this reservation, was the secretary of war, yet we feel justified in presuming, that it was done by the approbation and direction by the president. The president speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the war department. Hence, we consider the act of the war department, in requiring this reservation to be made, as being in legal contemplation the act of the president; and consequently, that the reservation thus made was, in legal effect, a reservation made by order of the president, within the terms of the act of congress.

*513]

It is argued, however, that by the 4th section of the act of the 26th of June 1834, the president was authorized to cause to be sold all the lands in the north-east district of the state of Illinois, embracing the land in question, with certain reservations only, within which it is contended, that the land in question is not included; that a proclamation was issued, directing various lands in said district to be sold, and that amongst the lands so proclaimed, was the land in question, unless excepted by the following exception "the lands reserved by law for the use of schools, and for other purposes, will be excluded from the sale." And that an extended plat was forwarded from the general land-office, marking and coloring certain lands to be reserved from sale; but that the land in question was not marked or colored, to be reserved from sale.

In the first place, we remark, that we do not consider this law as applying at all to the case. That has relation to a sale of lands, in the manner prescribed by general law, at public auction, whilst the claim to the land in question is founded on the right of pre-emption, and governed by different laws. The very act of 19th of June 1834, under which this claim is made, was passed but one week before the one of which we are now speaking, thus showing that the provisions of the one were not intended to have any effect upon the subject-matter on which the other operated. But we go further, and say, that whensoever a tract of land shall have been once legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed from the mass of public lands; and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it; although no reservation were made of it.

The very act which we are now considering will furnish an illustration of this proposition. Thus, in that act, there is expressly reserved from sale the land, within that district, which had been granted to individuals, and the state of Illinois. Now, suppose, this reservation had not been made, either in the law, proclamation or sale, could it be conceived, that if that land were sold at auction, the title of the purchaser would avail against the individuals or state to whom the previous grants had been made? If, as we suppose, this *question must be answered in the negative, the same principle will apply to any land which, by authority of law, shall [*514 have been severed from the general mass. Let us for a moment consider, to what results a contrary doctrine would lead; and the case before us will furnish a very striking illustration of them. If the party claiming the pre-emption right here, were to succeed, together with the land, he would recover all the improvements made upon it at the public expense. The lighthouse and improvements alone, it seems, by reference to the act making an appropriation for its erection, cost $5000. How much was expended in the buildings at the military post, we have no means of knowing, but probably a considerably larger sum. Thus, besides the land purchased for the sum of $94.61, he would recover property, and that too property necessary for the military defence and commerce of the country, which cost the United States many thousands of dollars; and if there had been expended upon it as many hundreds of thousands, as there have been thousands, the same result would follow. A principle leading to such startling consequences cannot, in our opinion, be a sound one. The right of pre-emption was a bounty extended to settlers and occupants of the

public domain. We cannot suppose, that this bounty was designed to be extended, at the sacrifice of public establishments, or great public interests. When the act of 1830 was passed, congress must have known of the authority which had, by former laws, been given to the president, to establish trading houses and military posts. They must have known, for it was part of the public history of the country, that a military post had been long established at Fort Dearborn; and was at the date of the law, occupied as such, by the troops of the United States. They seem, therefore, to have been studious to use language of so comprehensive a kind, in the exemption from the right of pre-emption, as to embrace every description of reservation and appropriation which had been previously made for public purposes. We have already said, that we think the language in which these exemptions are expressed is comprehensive enough to embrace the present case, so as to place it beyond the reach of the right of pre-emption.

It is further argued, that this case is embraced by the second section of the act of July 2d, 1836, entitled, "an act to confirm the sales of public lands, in certain cases." That section is in these words: "And be it further enacted, that in all cases where an entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver, from the treasury department, and the proceedings have been, in all other respects, fair and regular, such entries and sales are hereby confirmed; and patents should be issued thereon, as in other cases." Now, the first remark we make upon this act is, that when the previous law had totally exempted certain lands from the right of pre-emption, if there were nothing else in the case, it would be a very strong, not to say strained, construction of this section, to hold that congress meant thereby, by implication, to repeal the former law in so important a provision. But we are *satisfied, that *515] there were other cases to which it was intended to apply; where the instructions from the treasuary department assumed, to say the least, a doubtful, if not an illegal, power. As, for example, the instructions of the 7th February and 17th October 1831, by which entries were allowed to be made and certificates issued under the act 1830; which was only in force for one year from its passage; after the expiration of the year, where the persons claiming had been deprived of the benefits of the act of 1830, by reason of the township plats not having been furnished by the surveyor-general, and where, nevertheless, proofs of the claim had been filed before the expiration of the year. To this case, and others similarly situated, the law may well apply; because, without affecting the general principles of the system, they present instances in which innocent parties would have been injured by the acts or omissions of public officers, or by some other cause, as to which no fault was imputable to them. But further, the entries to be saved by this section must have been pursuant to instructions sent to the register and receiver from the treasury department. Now, it not only is not shown, that any instructions were so sent, which would authorize this pre-emption; but, on the contrary, the agreed case shows that the register and receiver at the Palestine land-office rejected it in 1831; that the commissioner of the general land-office, in the same year, in answer to a letter of Beaubean, complaining of that rejection, informed him that the land was reserved for military purposes; and that in July 1834, after the pre-emption law of that year, he applied to the register and receiver of the Danville

land-office to prove a pre-emption to the same land, who also rejected the application, and again informed him, that it was reserved for military purposes. Finally, by the express terms of this section, entries under the pre-emption laws, to be protected by it, must be, in all other respects, fair and regular. Now, as the patents were to be issued by the commissioner of the general land-office, and as they were only to issue where the proceedings were fair and regular, that officer must, of necessity, be the judge of that fairness and regularity. But as he refused to issue the patent, we know not whether he considered the proceedings in this case as being fair and regular. If they were not so, then they were not confirmed. We think, therefore, that the claimant can derive no aid from the act of 1836. Our conclusion, then, in relation to the first question is, that under the facts of the case, and the law applying to them, Beaubean acquired no title whatsoever to the land in question.

This being the case, it would not be absolutely necessary to decide the second question; but as it arises in the case, and has been fully argued, we will bestow upon it a very brief examination. That question is, whether, if he had acquired any title at all, it was such an one as would enable the lessor of the plaintiff below to recover in this action? Wilcox, the defendant in the original suit, did not claim, or pretend to set up, any right or title in himself. He held possession as an officer of the United States; and for them, and under *their orders. This being the state of the case, [*516
the question which we are now examining is really this, whether a person holding a register's certificate, without a patent, can recover the land, as against the United States.

We think it unnecessary to go into a detailed examination of the various acts of congress, for the purpose of showing what we consider to be true, in regard to the public lands, that with the exception of a few cases, nothing but a patent passes a perfect and consummate title. One class of cases to be excepted is, where an act of congress grants land, as is sometimes done, in words of present grant. But we need not go into these exceptions. The general rule is what we have stated; and it applies as well to pre-emptions as to other purchases of public lands. Thus, it will appear by the very act of 1836 which we have been examining, that patents are to issue in pre-emption cases. This, then, being the case, and this suit having been in effect against the United States; to hold that the party could recover as against them, would be to hold, that a party having an inchoate and imperfect title could recover against the one in whom resided the perfect title. This, as a general proposition of law, unquestionably, cannot be maintained.

But it is argued, that a law of the state of Illinois declares, that a register's certificate shall be deemed evidence of title in the party, sufficient to recover possession of the lands described in such certificate, in any action of ejectment or forcible entry and detainer; but the same law declares, that this shall be the case, unless a better legal and paramount title be exhibited for the same. Upon the construction of the law itself, it would not apply to this case, because the United States, not having parted with a consummate legal title, by issuing a patent, a better legal and paramount title was exhibited for the same. Where that was not the case, but the suit should be against any person not having the right of possession, or against a tres-

passer, these are the kinds of cases in which it would seem to us, by the proper construction of the act, that it was intended to operate.

A much stronger ground, however, has been taken in argument. It has been said, that the state of Illinois has a right to declare by law, that a title derived from the United States, which, by their laws, is only inchoate and imperfect, shall be deemed as perfect a title as if a patent had issued from the United States; and the construction of her own courts seems to give that effect to her statute. That state has an undoubted right to legislate as she may please, in regard to the remedies to be prosecuted in her courts, and to regulate the disposition of the property of her citizens, by descent, devise or alienation. But the property in question was a part of the public domain of the United States; congress is invested by the constitution with the power of disposing of, and making needful rules and regulations respecting it. Congress has declared, as we have said, by its legislation, that in such a case as this, a patent is necessary to complete the title. But in this case, no patent has issued; and therefore, by the laws of the United States the *517] legal title has not passed, *but remains in the United States. Now, if it were competent for a state legislature to say, that notwithstanding this, the title shall be deemed to have passed; the effect of this would be, not that congress had the power of disposing of the public land, and prescribing the rules and regulations concerning that disposition, but that Illinois possessed it. That would be to make the laws of Illinois paramount to those of congress, in relation to a subject confided by the constitution to congress only. And the practical result in this very case would be, by force of state legislation, to take from the United States their own land, against their own will, and against their own laws. We hold the true principle to be this, that whenever the question in any court, state or federal, is, whether a title to land which had once been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the state, is subject to the state legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.

It was urged at the bar, that the case of *Ross* v. *Barland*, in this court, 1 Pet. 656, sustained the ground taken as to the obligatory force of the law of Illinois. A very brief examination of that case will show, that it falls greatly short of what it is supposed to decide. That was a conflict between two patentees, both claiming under the United States. The elder patent was founded upon a certificate of the register of the land-office west of Pearl river. The junior patent was issued on a certificate of the board of commissioners west of Pearl river. The court below instructed the jury, that the junior patent of the plaintiff in ejectment, emanating upon a certificate for a donation claim, prior in date to the patent under which the defendant claimed, would overreach the elder patent of the defendant, and in point of law, prevail against it. It appears, that by the mode of proceeding in Mississippi, they look beyond the grant. This court, remarking upon that, said, that in so doing, and in applying their peculiar mode of proceeding to titles derived though and under the laws of the United States, they violated no provisions of any statute of the United States. But the

court then proceeded to say: "The important question in the case is this: in applying its own principles and practice in the action of ejectment, as might well be done in this case, has the court misconstrued the act of congress, in deciding that the grant of the plaintiff, emanating upon the donation certificate of the board of commissioners west of Pearl river, set forth in the record, would overreach the defendant's grant, and should prevail against it in the action of ejectment." They then proceed to examine the various acts of congress upon the subject; declare their opinion to be, that the determination of the commissioners was final; and come to the conclusion, that the supreme court of Mississippi had *not misconstrued the acts of congress, from which the rights of the parties were derived; [*518 and consequently, affirmed the judgment. Thus, it will appear, that in that case, whilst the form and mode of proceeding by the law of Mississippi were recognised, yet the rights of the parties depended exclusively upon the construction of acts of congress; and that this court thought that the court below had construed them correctly. This case, then, affords no countenance whatever to the argument founded upon it.

Upon the whole, we are of opinion, that the judgment of the supreme court of Illinois is erroneous: it is, therefore, reversed, with costs.

This cause came on to be heard, on the transcript of the record from the supreme court of the state of Illinois, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said supreme court in this cause be and the same is hereby reversed and annulled, with costs; and that this cause be and the same is hereby remanded to the said supreme court, that such further proceedings may be had therein, in conformity to the opinion and judgment of this court, and as to law and justice may appertain.

---

*Bank of Augusta, Plaintiffs in error, *v.* Joseph B. Earle, [*519
Defendant in error.

Bank of the United States, Plaintiffs in error, *v.* William D. Primrose, Defendant in error.

New Orleans and Carrollton Railroad Company, Plaintiffs in error, *v.* Joseph B. Earle, Defendant in error.

Powers of corporations of other states.

An action was instituted in the circuit court of the United States for the district of Alabama, by the Bank of Augusta, Georgia, against the defendant, a citizen of Alabama, on a bill of exchange drawn at Mobile, Alabama, on New York, which had been protested for non-payment, and returned to Mobile; the bill was made and indorsed for the purpose of being discounted by the agent of the bank, who had funds in his hands belonging to the plaintiffs, for the purpose of purchasing bills of exchange, which funds were derived from bills and notes discounted by the bank, in Georgia; the bill was discounted by the agent of the bank, in Mobile, for the benefit of the bank, with their funds, to remit the said funds to the bank. The defendant defended the suit, on the facts; the Bank of Augusta was a corporation incorporated by an act of the legislature of Georgia, and had power such as is usually conferred on banking institutions, as to purchase bills of exchange, &c. The circuit court held, that the plaintiffs could not recover on the bills of exchange, and that the purchase of the bills, by the agent of the plaintiffs, were prohibited by the laws of Alabama, and gave judgment for the defendant.