by the defendants, severally, where the judgment operated, under the laws of Louisiana, as a several as well as joint judgment, although they might have united in the writ of error; and if any one choose not to prosecute it, they others might, upon a summons and severance, proceed alone.

The case of *Owings* v. *Kincannon*, 7 Pet. 399, seems to have been misunderstood at the bar. The objection in that case was not, that one or more of the defendants might not pursue an appeal, for their own interest, if the others refused to join in it, upon due notice, and process for that purpose from the circuit court; but that it did not appear that all the defendants were not ready and willing to join in the appeal, and that the appeal was brought by some of the appellants, without giving the others an opportunity of joining in it, for the protection of their own interest, not only against the appellee, but against the appellants, as their own interests might be distinct from, or even adverse to, that of the appellants; and it was right and proper, that all the parties should have an opportunity of appearing before the court, so that one final decree, binding upon all the parties having a common interest, might be pronounced.

Upon the whole, therefore, our opinion is, that the appeal must be dismissed, with costs, against all the defendants except Todd, and as to him, it is to be retained, for a hearing upon the merits.

Ordered accordingly.

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*Adam S. Mills and others, Plaintiffs in error, *v.* William G. Brown and others, and the County of St. Clair, Defendants in error. [*525

Error to state court.

The supreme court has not jurisdiction on a writ of error to the supreme court of a state, in which the judgment of the court was not, necessarily, given on a point, which was presented in the case, involving the constitutionality of an act of the legislature of the state of Illinois asserted to violate a contract.

The supreme court will not, when requested by the counsel for plaintiffs and defendants in error in a case in which it has not jurisdiction to affirm or reverse the judgment of the court from which the same has been brought by a writ of error to a state court, examine into the questions in the case and decide upon them. Consent will not give jurisdiction; when the act of congress has so carefully and cautiously restricted the jurisdiction conferred upon this court, over the judgments and decrees of the state tribunals, the court will not exercise jurisdiction in a different spirit.

Error to the Supreme Court of the state of Illinois. The plaintiffs in error instituted a suit in the circuit court of the state of Illinois, claiming, by a bill filed in that court, to hold, under an act of the legislature of Illinois, an exclusive right to erect a ferry on the Mississippi river, from land owned by them, to the city of St. Louis, Missouri. The defendants in the suit denied the right thus set up, and claimed the right to set up another ferry, from Illinois to St. Louis, under other acts of the legislature of Illinois. The case was, after a decree of the circuit court in favor of the defendants, carried by the plaintiff by appeal to the supreme court of the state, where judgment in favor of the defendants was affirmed. The plaintiffs prosecuted this writ of error, on the ground, that the act of the legislature of Illinois, passed subsequent to the act which had authorized the

plaintiffs to erect their ferry, was a violation of the contract made with the plaintiffs by the act of assembly.

The decision of the supreme court of Illinois, which was in favor of the defendants, was given upon other questions presented in the case, besides those on the contract made by the first act of the assembly of Illinois. The *526] counsel for the plaintiffs in error proposed to the court *that a decision upon the whole merits of the case should be made, although it might be considered that the court had not jurisdiction of the case on the writ of error; the questions in the case being of great importance, and the parties being willing and desirous to have them decided by this court.

The case was argued by *Bogy* and *Jones*, for the plaintiffs in error; and by *Key* and *Reynolds*, for the defendants.

Taney, Ch. J., delivered the opinion of the court.—This case is brought here by writ of error to the supreme court of Illinois, under the 25th section of the act of 1789. It appears, that the legislature of Illinois, by a law passed March 2d, 1819, granted to a certain S. Wiggins, his heirs and assigns, the right to establish a ferry, upon his own lands, across the Mississippi, near the town of Illinois. By a subsequent act of March 2d, 1839, the legislature of Illinois granted to the county of St. Clair, in that state, and to certain commissioners in behalf of the county, the right to locate a road and landing between Cahokie creek and the Mississippi river, opposite to St. Louis. And the commissioners appointed by this law proceeded to lay out the road and establish the landing to certain lands which belonged to the plaintiffs in error; and to which, by sundry conveyances, they derived title from the said Wiggins. The plaintiffs in error thereupon filed their bill in the circuit court of the state, praying that the county of St. Clair and the said commissioners should be enjoined from further proceedings under the act of assembly last above mentioned. The respondents, the present defendants in error, appeared and demurred generally to the bill; and upon final hearing of the cause, the demurrer was sustained by the court, and the bill dismissed. From this decision, the complainants appealed to the supreme court of the state, where the decree of the circuit court was affirmed. The points proposed to be raised here, are: 1st, Whether the act of assembly of 1819, was not a contract with the said Wiggins, his heir and assigns; and 2d, Whether the act of 1839 does not impair the contract.

*These points are not directly stated in the pleadings, nor are *527] they noticed in the decree of the circuit or supreme court of the state. Yet, if it appeared from the bill, that the court could not have sustained the demurrer, without considering and deciding these points; if they were necessarily involved in the decision of the case, as presented by the bill and demurrer, this court would have jurisdiction, upon the writ of error, although they are not expressly stated in the decrees to have been raised and decided.

It is unnecessary, for the purposes of this opinion, to state the contents of the bill. Indeed, as concerns the question before us, it could not well be understood, without giving the whole bill in its own words. It is sufficient to say, that we have carefully examined it, and are satisfied, that the points proposed to be raised here were not necessarily involved in the judgment

given by the state court. On the contrary, we think it may have come to the conclusion, that the demurrer ought to be sustained on other grounds, and that the bill was not so framed as to require a decision upon these questions.

It is true, that the plaintiffs and defendants in error have both waived all objections to jurisdiction, and have pressed the court for a decision on the principal points. But consent will not give jurisdiction. And we have heretofore, on several occasions, said, that when the act of congress has so carefully and cautiously restricted the jurisdiction conferred upon this court, over the judgments and decrees of the state tribunals, it would ill become the court to exercise it in a different spirit. And it certainly could not be justified in expressing an opinion favorable or unfavorable as to the correctness of this decree, when it has not the power to affirm or reverse it. The writ of error must, therefore, be dismissed.

Writ of error dismissed.

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*Joshua Mauran, Plaintiff in error, *v.* Edward Bullus, Defendant in error. [*528

Construction of guarantee.

In the construction of all written instruments, to ascertain the intention of the parties is the great object of the court, and this is especially the case, in acting upon guarantees.

Generally, all instruments of suretyship are construed strictly, as mere matters of legal right; the rule is otherwise, where they are founded on a valuable consideration.

Error to the Circuit Court of Rhode Island. The case, as stated in the opinion of the court, was as follows:

The defendant in error and Joshua Mauran, Jr., of the city of New York, on the 8th of September 1836, entered into articles of copartnership, in the trade and business of general shipping merchants, and of buying and selling merchandize on their own account, and also on commission for the account of others; which was to continue three years. Mauran agreed to pay into the firm, as capital stock, such sums as he should be able to realize on closing the business of merchandizing, in which he had been engaged. Bullus agreed to pay a sum of from $28,000 to $30,000 in cash. And it was stipulated, that Mauran should not withdraw from the concern more than $2000 per annum, nor Bullus more than $3000, unless by consent of the copartners in writing. Mauran covenanted, that within a reasonable time, he would pay the debts owing by him, out of his private funds; and that on or before the 8th of September instant, he would give to Bullus satisfactory security for the performance of this covenant.

On the 9th of September 1836, the defendant below wrote to Bullus the following letter:

"Mr. Edward Bullus:

Dear Sir,—As you are about to form a connection in the mercantile business in the city of New York, with my son, Joshua Mauran, Jr., under the firm of Mauran & Bullus. And as the said J. Mauran, Jr., *having been, and is at this time prosecuting mercantile business in that [*529 city, on his own account: Now, therefore, in consideration of the same and