Upon the whole, the decree of the Circuit Court is affirmed, with costs.

WASHINGTON BRIDGE COMPANY, APPELLANT, *v.* WILLIAM STEWART, JAMES STEWART, AND JOHN GLENN.

After a case has been decided upon its merits, and remanded to the court below, if it is again brought up on a second appeal, it is then too late to allege that the court had not jurisdiction to try the first appeal.[1]

The Supreme Court has no power to review its decisions, whether in a case at law or in equity. A final decree in chancery is as conclusive as a judgment at law.[2]

An affirmance by a divided court, either upon a writ of error or appeal, is conclusive upon the rights of the parties.

THIS was an appeal from the Circuit Court of the United States, for the District of Columbia, held in and for the county of Washington, sitting as a court of equity.

The same case was before the court at January term, 1840, and the decree of the court below affirmed by the Supreme Court, but in consequence of the court being equally divided, no opinion was given, and no report of the case published. It now came up on an allegation that it was improperly brought up before, as the decree, from which the appeal was taken, was said not to be a final decree.

The case was this:

The Washington Bridge Company were the owners of a bridge across the Potomac river, under a charter granted in 1808. In February, 1831, a large part of the bridge was broken up and carried away by the ice and flood; and in April, the president and directors called for an instalment of ten dollars per share from the stockholders, for the purpose of repairing it. The defendants in error did not pay, and their shares were forfeited on the 21st of June, 1832, under the 8th section of the charter.

On the 14th of July, 1832, Congress passed an act to purchase the bridge, and appropriated $20,000 for that pur-

[1] FOLLOWED. *Whyte* v. *Gibbes*, 20 How., 542. CITED. *Bank of the United States* v. *Moss*, 6 How., 38; *Peck* v. *Sanderson*, 18 Id., 42; *Williams* v. *Bruffy*, 12 Otto, 255; s. c. 1 Morr. Tr., 414; *Holmes* v. *Oregon &c. R. R Co.*, 9 Fed. Rep., 238; s. c. 7 Sawy., 392; *Ogle* v. *Turpin*, 8 Bradw. (Ill.), 455; *Adams Co. v. B. & M. R. R. Co.*, 55 Iowa, 98. And see *Insurance Co.* v. *Boon*, 5 Otto, 143; *Renick* v. *Ludington*, 10 W. Va., 537, 540.

[2] FOLLOWED. *Noonan* v. *Bradley*, 12 Wall., 129; *Tyler* v. *Magwire*, 17 Id., 283. CITED. *French* v. *Hay*, 22 Wall., 246.

pose, which they directed to be divided amongst the stockholders in the manner therein pointed out.

*414] In May, 1833, the defendants in error filed a bill in the Circuit *Court claiming to be stockholders, and, as such, to be entitled to a distributive share of the purchase money. The bridge company resisted the claim on the ground that their shares had been forfeited, and in November, 1838, the cause came on for hearing on the bill, answers, exhibits, depositions, and general replication, when the court made the following decree:

"This cause having been set for hearing upon the bill, answer, general replication, exhibits, and evidence, and coming on to be heard and argued by counsel, it is, on this twenty-ninth day of November, in the year eighteen hundred and thirty-eight, after full consideration, ordered, decreed, and adjudged, that the rights and interests of the complainants, and the other stockholders in said bill of complaint mentioned, and who have come in, or may come in, before the final determination of this cause, and procure themselves to be made parties to these proceedings, have not been, and were not, forfeited under and by virtue of the proceedings of said bridge company, stated and set forth in the said answer, and exhibits, and evidence, but that the same remain in full force and virtue, and that the said parties are respectively entitled to their proportion of the sum of $20,000, mentioned and stated in said bill of complaint as stockholders in said company; and that, in order to fix and adjust the said proportions or shares of said parties, there be first deducted the sum of $10,561.55, mentioned in said answer, being the sum advanced by certain stockholders, as therein mentioned, with interest thereon from the time the same was advanced to the time of the receipt of the said $20,000, being an average of nine months, for which said interest is to be calculated; also the sum of $568.25, being the amount of unclaimed dividends expended on the said bridge, with interest thereon from the time of said expenditure to the receipt of said $20,000, and that subject to such deductions; and, after the same shall have been made, the said complainants are respectively entitled to, and shall receive, their full share and proportion of the interest on the same, which shall have been earned and made of the said sums so due to them respectively pending this suit, under the investment made thereof by complainants.

"And it is ordered, that other items claimed to be deducted be rejected, no evidence having been offered to show their character or their amount.

"And it is further ordered, that the case be referred to the

auditor, to state an account in conformity with the principles laid down in this decree."

From this decree the bridge company prayed an appeal to the Supreme Court, where, as has already been stated, it was affirmed by a divided court.

In April, 1840, the case was referred by the Circuit Court to the auditor, who made the following report in November, 1841:

"The undersigned auditor, to whom was referred the papers in *this cause on the 29th of April, 1840, has [*415 had the same under examination, and, after a full consideration of the same, begs leave to make the following report: That the amount of funds in the hands of Frederick May, president and treasurer of the Washington Bridge Company, including interest on corporation stock received and to be received, on the 30th June, 1841, is $22,221.52. That the amount refunded the stockholders of fifteen hundred and nineteen shares, which they had advanced towards repairing the bridge, with interest thereon according to the decree; the amount of unclaimed dividends which had been expended for said repair, and also directed to be refunded with interest for nine months; for debt due from the bridge company, including costs of suit; the trustee's commission, auditor's bill, &c., and the payment to said fifteen hundred and nineteen shareholders of ten per cent. upon the cost of their stock, as per statement herewith submitted, amount to $18,991.11, leaving a balance in the trustee's hands of $3,222.41.

"That the holders of the four hundred and seventy-three shares, which were deemed by the company to have been forfeited, (but which the court decided were not forfeited,) according to the cost of the same, amount to $20,749.17, ten per cent. on the same (being the dividend paid to the first-mentioned stockholders) amounts to $2,074.91, as per statement B herewith, leaving a balance, after paying said amount, in the hands of the trustee of $1,147.50.

"In ascertaining the cost of the shares to the present claimants, the auditor has taken pains, as far as possible, to ascertain the same. The principal claimants are John Glenn and the Messrs. Stewarts. In the case of Mr. Glenn, he states on oath, that the stock belongs to the estate of Robert Barry, and is held by him as trustee or administrator. Barry was an original subscriber. In the case of the Stewarts, they claim as having obtained it from D. Stewart's estate in the course of distribution, not as purchaser. D. Stewart was an original subscriber. In all other cases, the scale furnished from the president of the company of the current price of the stock at

the periods of transfer, have been the sole guide by which to fix the value. Several of the stockholders on the list are known to be dead, and it is not known to the auditor who their representatives are; but in making a distribution of this fund, their rights ought to be preserved, and their fair dividend paid when demanded.

"Dr. May, the trustee, claims $1,000 for his commission on the money received from the Treasury, $20,000, for the sale of the bridge. The charge has been objected to by some of the claimants, and the auditor has reduced it to $500; if he has erred in this, the court can correct it.

"The amount of the unclaimed dividends used for repairing the bridge, $568.25, and nine months' interest thereon, $25.57, making $593.82, has been in part paid, but a very considerable part, in all probability, never will be called for, as many of
*416] the persons who *were entitled to it are dead, and some insolvent; their representatives knowing nothing of the small amount so many years due. The complainants, however, in the present cause, have no claim on the unclaimed money due to others.

"As regards the disposition to be made of the balance which will remain in the hands of the trustee, ($1,147.50,) after paying the stockholders ten per cent., the auditor begs reference to his remarks on the general statement herewith.

"Submitted by

"JOSEPH FORREST, Auditor."

Whereupon the court made the following decree in the premises:

"The report of the auditor in this case having been filed, together with the accompanying statements by him made, and constituting part of the same, and being fully considered by the court, it is, this fourth day of June, eighteen hundred and forty-two, ordered and decreed, that the same be, and it is in all respects confirmed. And the said cause coming on for final hearing upon the bill, answer, replication, exhibits, evidence, report of auditor, &c., and being maturely considered, it is further ordered, adjudged, and decreed, that the complainants are entitled to the relief prayed, in conformity with the report of said auditor as aforesaid, and that the relief be extended to the other stockholders in said company in the proportions and for the sums mentioned in the statement by the auditor of the stockholders in said company who have not participated in the dividends of said bridge company. And it is further ordered and decreed, that the said defendants pay over to said parties respectively, or to their solicitors on

record, the said sum so due to them respectively, in conformity with said report and statement and of this decree, together with the costs of this suit to be taxed by the clerk, including the costs of the Supreme Court, on or before the first day of July, 1842, and file with said clerk, on or before said first day of July, 1842, a statement of said payments so made.

"By order of the court."

From this decree the bridge company appealed to the Supreme Court.

Bradley, for the appellants.
Coxe, for the appellees.

Bradley referred to the record to show, that the decree first appealed from was an interlocutory, and not a final decree, and that the Supreme Court had not jurisdiction in such a case. He then proceeded thus:

The appellants are not estopped from denying the jurisdiction of the Supreme Court to which they appealed in that cause, as the want of jurisdiction is apparent in the record. See *Wilson* v. *Hobday*, 4 Mau. & Sel., 120.

*That was debt on a replevin-bond given by the defendant to the Mayor of Canterbury, and the breach assigned was, that the defendant did not appear and prosecute his replevin in the Mayor's Court. The defendant demurred to the declaration, and, among other things, assigned as cause of demurrer, that it did not appear upon the declaration that the mayor had jurisdiction to grant replevins, and to take bond, &c. [*417

The court was of opinion that it did sufficiently appear, that the mayor *prima facie* had jurisdiction, and upon that ground only overruled the demurrer; whereas if they had been of opinion that the defendant was estopped to deny the jurisdiction, because he had resorted to that court for relief, they would have decided the case upon that ground rather than on the doubtful ground, that the mayor had jurisdiction, and which they took great pains to support.

See also *Ketland* v. *The Cassius*, 2 Dall., 368. "The court is bound to take notice of a question of jurisdiction whenever it may occur, and however it may be proposed; for, if we are satisfied that we have not legal cognisance of any cause, or in terms less direct, if we are not satisfied that we have cognisance, we ought not to proceed to a decision or an investigation upon its merits." Per Wilson, J.

A plaintiff may assign for error the want of jurisdiction in that court to which he had chosen to resort. It is the duty

of the court to see that they have jurisdiction, for the consent of parties cannot give it; and if they decide a case of which they have no jurisdiction, it is the error of the court. The decision is void because *coram non judice*. *Capron* v. *Van Noorden*, 2 Cranch, 126.

Crow v. *Edwards*, Hob., 5. "Consent of parties cannot change the law:" *à fortiori* cannot give jurisdiction.

"The courts of the United States are all of limited jurisdiction, and their proceedings are erroneous, if the jurisdiction be not shown upon them;" but *quære*, whether judgments in such cases are absolute nullities, which may be totally disregarded? For, it does not follow that the court had not jurisdiction, because all the circumstances necessary to give jurisdiction do not appear in the proceedings. It is error, however, not to state them; and the judgment may, therefore, be reversed. But, if it does appear upon the proceedings that the court had not jurisdiction, the judgment is an absolute nullity, and may be totally disregarded. See *Kempe's Lessee* v. *Kennedy*, 5 Cranch, 185; *The Life Insurance Company* v. *Adams*, 9 Pet., 602, before cited; *Decatur* v. *Paulding*, 14 Id., appendix, 609, and *Skillern's Ex.* v. *May's Ex.*, 6 Cranch, 268, in which the Supreme Court decided, that as the merits of the cause had been finally decided in that court, and its mandate required only the execution of its decree, the Circuit Court was bound to carry that decree into execution, although the jurisdiction of that court was not alleged in the pleadings.

*418] *Letters of administration, granted while there is a qualified executor capable of acting, are absolutely void. *Griffith* v. *Frazier*, 8 Cranch, 26.

In the case of *Houston* v. *Moore*, 3 Wheat., 433, the court said, that the jurisdiction of the Supreme Court under the 25th section of the Judiciary Act of 1789 extends only to a final judgment or decree; and that a judgment reversing that of an inferior court, and awarding a *venire de novo*, is not a final judgment; and in *Martin* v. *Hunter*, 1 Wheat., 355, that a decree affirming an interlocutory decree is not a final decree; and in *Weston* v. *City of Charleston*, 2 Pet., 454, that a final judgment is that which determines the particular cause: it need not finally decide upon the rights litigated; and in *Rutherford* v. *Fisher*, 4 Dall., 22, that a decree, overruling in equity a plea of limitations, and ordering the defendant to answer, is not a final judgment; and Chase, J., said that "in England a writ of error may be brought upon an interlocutory decree or order; but here the words of the act allow it only in the case of a final judgment." In *Young* v. *Grundy*,

6 Cranch, 51, the Supreme Court said, no appeal or writ of error will lie to an interlocutory decree dissolving an injunction—the same in *Gibbons & Ogden*, 6 Wheat., 448; and in *The Palmyra*, 10 Id., 502, a decree for restitution, with costs and damages, before the court had acted upon the report of the commissioner as to the damages, was held not to be a final decree.

In *Owen* v. *Hurd*, 2 T. R., 643, 644, it appeared that the court had no jurisdiction, because the arbitration had not been made a rule of court. The parties agreed to waive the objection and go into the merits, but Lord Kenyon, C. J., said, "that could not be done; for the court were bound to take notice that they had no jurisdiction; and he remembered an instance, many years ago, when, there being no title to the affidavits in the cause, the court said they could not take any notice of them, even though the counsel on the other side did not wish to take the objection." See *Bingham* v. *Cabot et al.*, 3 Dall., 32 *n.* In *Ross* v. *Triplett*, 3 Wheat., 600, the Supreme Court said, that its jurisdiction extends only to final judgments and decrees of the Circuit Court of the District of Columbia, not to cases where the opinion of the judges of that court were divided.

In the case of *The Abby*, 1 Mason, 363, 364, Mr. Justice Story said, "It cannot be admitted, that any party can first affirm the jurisdiction by taking the property on bail, and then turn round and deny the same jurisdiction, when the court can no longer administer effectual relief to the interests of other persons. The party is estopped by his own acts from such a proceeding. A plea to the merits is an admission that the jurisdiction of the court is well founded, and a decree upon those merits cannot afterwards be arrested, unless the defect of jurisdiction be apparent on the face of the record."

*But if the defect of jurisdiction be already apparent on the face of the record, and there is no necessity to [*419 introduce into the record any fact to show the want of jurisdiction, the party is not estopped from availing himself of such defect, and the court is as much bound to take notice of it as if it had been pleaded.

So in *Fisher* v. *Harnden*, 1 Paine, 58, Mr. Justice Livingston said, "Where a court has jurisdiction, it has a right to decide every question that occurs in the cause; and, whether its decision be correct or otherwise, its judgment, until reversed, is considered as binding. But if it act without authority, its judgments are considered as nullities, and form no bar to a recovery, which may be sought in opposition to them, even prior to a reversal."

If, then, the judgment of this court, thus technically affirming the interlocutory decree of the Circuit Court, is a mere nullity, as we think it is, the cause now comes before this court for the first time upon its real merits, and the counsel for the original defendants, now appellants, respectfully submit the following argument.

(The argument of Mr. *Bradley* upon the merits of the case is omitted, because the decision of the court turned upon the preceding point.)

Coxe, for appellees.

This case originated in a bill in equity filed by the appellees, on behalf of themselves and others in the Circuit Court for the county of Washington, in May, 1833.

After a tedious prosecution of the cause, a decree was rendered in November term, 1838, by the Circuit Court. The chief judge, Cranch, being interested in the case, as one of the defendants, did not sit in the cause, and, consequently, the decree was made by the concurring opinions of the two other judges.

The decree having been made, the defendants, now the appellants, prayed an appeal to the Supreme Court, and, in January term, 1840, the decree of the Circuit Court was affirmed with costs. The mandate from the Supreme Court directed to the Circuit Court, commanding that such execution and proceedings be had in the said case, as, according to right and justice, and the law of the United States ought to be had, was filed on the 3d April, 1840.

The case was referred to the auditor to state an account in conformity with the principles laid down in the decree. The auditor made his report in November term, 1841. To this report no exceptions were taken by either party, and it was accordingly, in conformity with the practice of the Circuit Court, confirmed 4th June, 1842.

From this decree the defendants again appeal, and thus the case is for the second time brought up for decision.

It will be observed by the court that the argument sub-
*420] mitted on behalf of the appellants, presents no objection to any proceeding or *action of the Circuit Court subsequent to the former decree of this court. It contains no objection to the report of the auditor, no allegation that it was not in precise accordance with the mandate of this court issued in January, 1840.

The argument now addressed to the court on the part of the appellants seeks to establish three positions:

1. That the former decree, having been made by a divided

court, is not to be regarded as an adjudication of the rights of the parties.

2. That inasmuch as further proceedings were necessary to carry out that decree, the decree of the Circuit Court then appealed from was not final, and consequently the Supreme Court had no jurisdiction of the case, and all its proceedings being *coram non judice*, are null and void.

3. That the real merits of the case being open now for the first time, this court will re-examine those merits, and decree in opposition to its former judgment.

These questions have an importance far beyond the interests involved in this particular case.

1. The question is, not what is to be recognized here or elsewhere as the authority of a decision of the Supreme Court when the judges were equally divided, in case such decision should be cited as an authoritative adjudication of principles. It is, however, insisted that this case was decided—that it passed into *rem judicatam*. The law is perfectly well settled that when this court is equally divided in opinion upon a writ of error, the judgment of the inferior court is affirmed. *Etting* v. *Bank of United States*, 11 Wheat., 59. The judgment has the same force and effect in every particular as if it had passed by the unanimous opinion of the court.

2. The decree of the Circuit Court upon which the decree of affirmance passed, not being a final judgment, this court had no jurisdiction.

This ground of objection is not entitled to much favor from this court. The now appellant was then the appellant. He invoked the jurisdiction of this court, and having been unsuccessful in his application, now denies the validity of his own acts, disclaims a jurisdiction which he himself sought, and denies the authority of the court into which he himself compelled his antagonist to meet him.

But the answer to this objection is twofold:

1. The question is not now open whether or not this court had jurisdiction of the former case; nor has this court now jurisdiction to examine its own judgment passed four years since, and to reverse it for any cause of error. *Skillern's Ex'ors* v. *May's Ex'ors*, 6 Cranch, 267.

The question certified from the Circuit Court of Kentucky to the Superior Court for its decision, was whether the cause could be dismissed from the Circuit Court for want of jurisdiction after the *case had been removed by writ [*421 of error to the Supreme Court, and that court had acted upon

it and remanded the cause to the Circuit Court for further proceedings. It was held that the objection came too late.

It is manifest that if the Circuit Court had no jurisdiction of the case, that the only question over which this court could exercise authority was the single one of jurisdiction. When, therefore, it was held that it was too late to question the jurisdiction of the Circuit Court, *a fortiori* it was too late to question that of the Supreme Court.

The ground of objection now urged existed when the case was formerly before the Supreme Court. It might then have been urged. If not noticed by counsel, it was competent for the court *ex mero motu* to take cognisance of it, and to dismiss it for that cause. In adjudicating upon the merits of the case, this court has, by necessary implication, asserted its jurisdiction. It is alleged that the judgment was not final. This point was fully argued in *McDonough* v. *Millaudon*, at the present term. The whole law of the case was settled; nothing remained but the ministerial duty of stating the account, which is in the nature rather of an execution to carry out the decree.

If there be error in this, how can this error now be rectified? It will hardly be contended that this can be assimilated to some which have been cited, and that the judgment rendered in 1840 was *coram non judice*, and consequently an absolute nullity.

In *Kempe's Lessee* v. *Kennedy*, 5 Cranch, 185, this court held that such was not the case in regard to the courts of the United States. If jurisdiction does not appear on the face of their proceedings, their judgments are erroneous and reversible, but they cannot be considered as nullities which may be totally disregarded.

In this aspect of the case, the present appeal, although nominally and in form an appeal from a decree of the Circuit Court rendered in June, 1842, is substantially an appeal from a decree of this court rendered in January, 1840.

It is contended upon this point,

1. That there is no mode pointed out by law in which an erroneous judgment of this court can be reviewed and reversed either in this or any other court.

2. That upon this appeal nothing is before this court but the proceedings of the Circuit Court upon and subsequent to the mandate.

Both of these points have been conclusively settled by a series of adjudications:

Himely v. *Rose*, 5 Cranch, 316. This cause came up a second time by an appeal, and the chief justice declared that

nothing was before the court except what was subsequent to the mandate. In 316, in delivering the opinion of the court, he again says, "A decree *having been formerly [*422 rendered in this cause, the court is now to determine whether the decree has been executed according to its true intent and meaning."

Martin v. *Hunter's Lessee*, 1 Wheat., 364. This case was brought before the Supreme Court on a writ of error upon proceedings subsequent to the mandate formerly awarded, and the error assigned was in the judgment of the court of appeals of Virginia, which had solemnly decided, that the Supreme Court did not possess the appellate jurisdiction which it had exercised in rendering the former judgment. The points of difference which distinguish that case from the one at bar are, 1st, that in *Martin* v. *Hunter*, the court below had adjudged that this court had no jurisdiction, and therefore its proceedings were *coram non judice;* here the Circuit Court has without hesitation recognized the authority of this court, and as in duty bound executed its mandate. 2d. In *Martin* v *Hunter*, the objection was made by a state court jealous of its rights and powers, and by parties brought unwillingly before the federal tribunal; here it is the suggestion of the very party who voluntarily invoked the appellate jurisdiction of this court. 3d. In that case the judgment of the inferior court embodied and asserted the defect of jurisdiction, and it was that judgment which was to be reviewed; in this case it is sought to give to this appeal the force and effect of an appeal directly from the decree of the Supreme Court itself.

In p. 355, the court says, "To this argument several answers may be given. In the first place, it is not admitted that upon this writ of error the former record is before us." "In the next place, in ordinary cases a second writ of error has never been supposed to draw in question the propriety of the first judgment, and it is difficult to perceive how such a proceeding could be sustained upon principle. A final judgment of this court is supposed to be conclusive upon the rights which it decides, and no statute has provided any process by which this court can revise its own judgments. In several cases which have been formerly adjudged in this court, the same point was argued by counsel and expressly overruled. It was solemnly held that a final judgment of this court was conclusive upon the parties and could not be re-examined." *Browder* v. *McArthur*, 7 Wheat., 58.

On an appeal, after a mandate, counsel applied for a rehearing of the original case. The court refused to allow it, being

of opinion that it was too late to grant a rehearing after the cause had been remitted to the court below, &c.; and that a subsequent appeal from the Circuit Court for supposed error in carrying into effect such mandate, brought up only the proceedings subsequent to the mandate, and did not authorize an inquiry into the merits of the original decree. The *Santa Maria*, 10 Wheat., 442.

Himely and Rose is affirmed, and it is said that the original *423] proceedings are before the court on the second appeal only for the purpose *of enabling it to see and adjudge any new points which were not terminated by the original decree. *Ex parte Sibbald*, 12 Pet., 492.

We think proper to state our settled opinion of the course which is prescribed by the law for this court to take, after its final action upon a case brought within its appellate jurisdiction, as well as that which the court whose final decree or judgment has been thus verified ought to take. Appellate power is exercised over the proceedings of inferior courts, not on those of the appellate court. The Supreme Court have no power to review their decisions, whether in a case at law or equity. A final decree in chancery is as conclusive as a judgment at law. Both are conclusive on the rights of the parties thereby adjudicated.

No principle is better settled, or of more universal application, than that no court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, except for clerical mistakes, or to reinstate a cause dismissed by mistake; from which it follows, that no change or modification can be made which can vary or affect it in any material thing.

When the Supreme Court have executed their power in a cause before them, and their final decree or judgment requires some farther act to be done, it cannot issue an execution, but shall send a special mandate to the court below to award it. Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree, as the law of the case, and must carry it into execution according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or farther relief; or review it upon any matter decided on appeal, for error apparent; or intermeddle with it, farther than to settle so much as has been remanded. After a mandate, no rehearing will be granted. It is never done in the House of Lords; and on a subsequent appeal nothing is brought up but the proceedings subsequent to the mandate. After this distinct exposition of the law by the Supreme Court, it would be

a work of supererogation for me to vindicate it from the charge of usurping a jurisdiction not vested in it by law, or to establish the correctness of a judgment which this high tribunal has rendered. Should this be deemed important, I proffer myself ready to show that the former decree of the Circuit Court was a final decree, within the meaning of the judicial act and the practice of this court; and that the decree, as well as that affirming it, was right.

No exception having been taken to the report of the auditor, and no error being assigned in that or in the final decree, it is submitted that the case is within the 17th rule of the court, and that the decree of the Circuit Court should be affirmed, with ten per cent. damages.

*Mr. Justice WAYNE delivered the opinion of the [*424 court.

This cause is now before us upon an appeal from a decree of the Circuit Court, made by it upon an auditor's report, in conformity with the mandate issued by this court, when the cause was before it upon a former occasion.

The appellants did not except to the auditor's report, in the court below. When the cause was tried upon the first appeal, the decree of the Circuit Court was affirmed by a divided court.

We are now asked by the counsel for the appellants to permit him to re-examine the decree of the Circuit Court, upon its merits, affirmed as it was by the Supreme Court, upon the ground that the affirmance was made when this court had not jurisdiction of the case; the first appeal having been taken upon what has since been discovered to have been an interlocutory and not a final decree.

The Supreme Court certainly has only appellate jurisdiction, where the judgment or decree of the inferior court is final. But it does not follow, when it renders a decree, upon an interlocutory and not a final decree, that it can, or ought, on an appeal from a decree in the same cause, which is final, examine into its jurisdiction upon the former occasion. The cause is not brought here in such a case for any such purpose. It was an exception, of which advantage might have been taken by motion on the first appeal. The appeal would then have been dismissed for the want of jurisdiction, and the cause would have been sent back to the Circuit Court for farther proceedings. But the exception not having been then made of the alleged want of jurisdiction, the cause was argued upon its merits, and the decree appealed from was affirmed by this court. Its having been affirmed by a divided court, can

make no difference as to the conclusiveness of the affirmance upon the rights of the parties. It is settled, that when this court is equally divided upon a writ of error or appeal, the judgment of the court below stands affirmed. *Etting* v. *Bank of the United States*, 11 Wheat., 59; the case of the *Antelope*, 10 Wheat., 66. Having passed upon the merits of the decree, this court has now nothing before it but the proceedings subsequent to its mandate. So this court said in *Himely and Rose*, and in the case of the *Santa Maria*, 5 Cranch, 314; 10 Wheat., 431. Its decree became a matter of record in the highest court in which the cause could be finally tried. To permit afterwards, upon an appeal from proceedings upon its mandate, a suggestion of the want of jurisdiction in this court, upon the first appeal, as a sufficient cause for re-examining the judgment then given, would certainly be a novelty in the practice of a court of equity. The want of jurisdiction is a matter of abatement, and that is not capable of being shown for error to endorse a decree upon a bill of review. Shall the appellant be allowed to do more now, than would be permitted on a bill of review, if this court had the power to grant him such a remedy? If he was, we should then *425] have a mode for the review of the decrees *of this court, which have become matters of record, which could not be allowed as an assignment of error for a bill of review, in any of those courts of the United States in which that proceeding is the ordinary and appropriate remedy.

The application has been treated in this way, to show how much at variance it is with the established practice of courts of equity.

It might, however, have been dismissed, upon the authority of a case in this court, directly in point, *Skillern's Executors* v. *May's Executors*, 6 Cranch, 267, and upon the footing that there is no mode pointed out by law, in which an erroneous judgment by this court can be reviewed in this or any other court. In *Skillern's* case, the question certified by the court below to this court, for its decision, was, whether the cause could be dismissed from the Circuit Court, for want of jurisdiction, after the cause had been removed to the Supreme Court, and this court had acted upon and remanded the cause to the Circuit Court, for further proceedings. This court said, "It appearing that the merits of the cause had been finally decided in this court, and that its mandate required only the execution of its decree, it is the opinion of this court that the Circuit Court is bound to carry that decree into execution, although the jurisdiction of that court is not alleged in the pleading." The jurisdiction of this court, in that case,

was as defective as it is said to have been in this. When that cause was before this court, though the judgment of the court below on it would have been reversed, upon motion, for the want of jurisdiction on the face of the record, the defect having escaped the notice of the court and of counsel, and the court having acted upon its merits, it determined that its decree should be executed. The reason for its judgment no doubt was, that the motion to dismiss the case, in the court below, for the want of jurisdiction, after it had been before the Supreme Court by writ of error, and had been acted upon, would have been equivalent, had it been allowed, to a decision that the judgment of this court might be reviewed, when the law points out no mode in which that can be done, either by this or any other court. The want of power in this court to review its judgments or decrees, has been so frequently determined by it, that it is not now an open question. Such is the result of what the court said in *Himely and Rose*, 5 Cranch, 314. The court says, in *Martin* v. *Hunter's Lessee*, 1 Wheat., 304, in reply to the allegation that its judgment had been rendered when it had not jurisdiction, "To this argument several answers may be given. In the first place, it is not admitted that upon this writ of error the former record is before us. In the next place, in ordinary cases, a second writ of error has never been supposed to draw in question the propriety of the first judgment, and it is difficult to perceive how such a proceeding could be sustained on principle. A final judgment of this court is supposed to be conclusive upon the rights it decides, and no statute has provided any process by which this court can reverse its [*426 *judgments. In several cases formerly adjudged in this court, the same point was argued, and expressly overruled. It was solemnly held, that a final judgment of this court was conclusive upon the parties, and could not be re-examined." In *Browder* v. *McArthur*, 7 Wheat., 58, counsel applied for a re-hearing; the court refused it, saying a subsequent appeal brought up only the proceedings subsequent to the mandate, and did not authorize an inquiry into the merits of the original decree. The same is said with equal positiveness in the case of the *Santa Maria*, 10 Wheat., 442. To these cases we add an extract from the opinion of the court, given by the late Mr. Justice Baldwin, in *Ex parte Sibbald*, 12 Pet., 492. That case called for the most careful consideration of the court. "Before we proceed to consider the matter presented by these petitions, we think it proper to state our settled opinion of the course which is prescribed by the law for this court to take, after its final action upon a case, brought within its

appellate jurisdiction, as well as that which the court, whose final decree or judgment has been thus verified, ought to take. Appellate power is exercised over the proceedings of inferior courts, not on those of the appellate court. The Supreme Court has no power to review its decisions, whether in a case at law or in equity. A final decree in chancery is as conclusive as a judgment at law. 1 Wheat., 355; 6 Id., 113, 116. Both are conclusive of the rights of the parties thereby adjudicated."

These cases are decisive of the motion made in this case, and as the decree now appealed from carries into execution the mandate issued by this court upon the first appeal, we direct it to be affirmed.

RICHARD NUGENT, ASSIGNEE OF ELIZABETH NORTON, IN BANKRUPTCY, PLAINTIFF IN ERROR, *v.* GEORGE W. BOYD, ISAAC T. PRESTON, AND ABNER PHELPS, DEFENDANTS.

The principles established in the case of *Ex parte the City Bank of New Orleans* in the matter of *Christy, assignee of Walden, ante*, p. 292, renewed and confirmed.

But this court does not decide, whether or not the jurisdiction of the District Court over all the property of a bankrupt, mortgaged or otherwise, is exclusive, so as to take away from the state courts in such cases.[1]

THIS case came up by appeal from the Circuit Court of the United States for East Louisiana, sitting as a court of equity.

The controversy was between the bankrupt's assignee, on one side, and a mortgage creditor and purchasers at the sale under
*427] state process of the mortgaged premises, on the other. The points to be *decided grew out of the bankrupt law, and especially out of the saving in favor of state liens in the 2d section, and the jurisdiction granted to the District and Circuit Courts of the United States in cases of bankruptcy by the 6th and 8th. The validity of certain rules established by the District Court of Louisiana, sitting in bankruptcy, was questioned, and the mortgage creditor, not having proved under the commission, claimed exemption from those rules, and asserted the right to pursue his prior lien in the state court.

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[1] COMPARE. *Houston* v. *City Bank of New Orleans*, 6 How., 506; *Ray* v. *Norseworthy*, 23 Wall., 128. CITED. *Kimberling* v. *Hartly*, 1 McCrary, 141. See also *Claflin* v *Houseman*, 3 Otto, 135. *In re Davis*, 1 Sawy., 262.