entitled to the property, and of course the purchaser at his call acquired the better title.

In every view we have been able to take of the case, we are satisfied the judgment of the District Court was right, and should be affirmed.

The court have had some difficulty in noticing the exceptions taken to the instructions in this case, in the form in which they are presented upon the record. It is matter of doubt whether they point to the instructions given and refused to the jury, or the refusal of the court below to grant a new trial. If to the latter, no question is presented upon which error would lie, according to the repeated decisions of this court. (4 Wheat., 213; 6 id., 542.)[1]

The counsel were probably misled, in making up the record, by the practice in Mississippi, where error will lie to the appellate court for a refusal to grant a new trial by statute. (Laws of Miss., p. 493, § 53.) But the rule is otherwise in the federal courts. That state has also a statute providing for the case of exceptions to be taken in the progress of the trial in the usual form (p. 620, § 40), which is the form that should have been observed in this case. The practice is particularly stated and explained in *Walton* v. *The United States*, (9 Wheat., 651), and in several later cases (4 Pet., 102.)

The practice is well settled and exceedingly plain and simple, and will be strictly adhered to by the court.

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*16] *THE TOMBIGBEE RAILROAD COMPANY *v.* WILLIAM H. KNEELAND.

A corporation, created by the laws of another state, can sue in Alabama, upon a contract made in that state.[2]

The decision of this court, in 13 Pet., 519, reviewed and confirmed.

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[1] CITED, *Pomeroy* v. *Bank of Indiana*, 1 Wall., 598.

[2] CITED. *Chaffee* v. *Fourth Nat. Bank of New York*, 71 Me., 529.

The power of a corporation to make valid contracts in a state other than the one creating it, has been abundantly established. *Commercial Bank* v. *Slocomb*, 14 Pet., 60; *Bunyan* v. *Costes*, Id., 122; *Irvine* v. *Lowry*, Id., 297; *Stoney* v. *American Ins. Co.*, 11 Paige (N. Y.), 675; *Mumford* v. *American Ins. Co.*, 4 N. Y., 467; *Kennebec Co.* v. *Augusta Ins. Co.*, 6 Gray (Mass.), 204; *Ohio Ins. Co.* v. *Merchants Ins. Co.*, 11 Humph. (Tenn.), 1; *Day* v. *Newark India Rubber Co.*, 1 Blatchf., 628, 632; *Blair* v. *Perpetual Ins. Co.*, 10 Mo., 561; *Atterbury* v. *Knox*, 4 B. Mon. (Ky.), 92; *Silver Lake Bank* v. *North*, 4 Johns. (N. Y.) Ch., 370; *Brown* v. *Minis*, 1 McCord, (S. C.), 80; *St. Charles Bank* v. *Bernales*, 1 Car. & P., 569; s. c. Ry. & M., 190; *King of Spain* v. *Hullet*, 1 Cl. & F., 333; s. c.

Tombigbee Railroad Company *v.* Kneeland.

THIS case was brought up by writ of error to the District Court of the United States for the Middle District of Alabama.

It was an action of assumpsit on a promissory note made by the defendant to the plaintiff. The declaration stated, that the Tombigbee Railroad Company was a corporation constituted by law in the State of Mississippi, the officers and stockholders of which were citizens of that State; and that the defendant, who was a citizen of the State of Alabama, by his promissory note, made at Gainsville, in the last mentioned State, on the 20th of January, 1838, promised to pay to the plaintiff or order, six months after date, at the plaintiff's banking-house in Columbus, in the State of Mississippi, the sum of nine thousand dollars, for value received,—concluding with the usual averment, that the defendant had not paid.

The defendant appeared and pleaded:—1st. Non-assumpsit.

2d. That the plaintiff was a banking institution without the limits of the State of Alabama, to wit, in the State of Mississippi, and, unauthorized by and contrary to the laws of the State of Alabama, exercised the franchise of banking in the State of Alabama, on the day and year in the declaration mentioned, and at Gainsville, in the county of Sumpter, in the State last aforesaid, in the unlawful exercise of the said banking franchise, did, as a bank, discount the said note, contrary to the laws of the State of Alabama.

3d. That the plaintiff, unauthorized by and contrary to the laws of the State of Alabama, did establish at Gainsville, in the county of Sumpter, in the State of Alabama, an office and bank to carry on in the State of Alabama the franchise of banking, and, in the exercise of that business, issued their bills and promissory notes for the purpose of circulation as cash bank-bills and currency, on the day and year in the declaration mentioned, and before and after; and that the

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1 Dow & C., 169; *Giraga Iron Co.* v. *Dawson*, 4 Blackf. (Ind.), 202; *Lathrop* v. *Scioto Bank*, 8 Dana (Ky.), 114; *Williamson* v. *Smoot*, 7 Mart. (La.), 31; *New York Ins. Co.* v. *Ely*, 5 Conn., 560.

The legislature may prohibit a foreign corporation from contracting within the state. *Washington Ins. Co.* v. *Chamberlain*, 16 Gray (Mass.), 165; *Baltimore &c. R. R. Co.* v. *Glenn*, 28 Md., 287; *Hutchins* v. *New England Coal Mining Co.*, 4 Allen (Mass.), 580.

The right to make the contract carries with it the correlative right to enforce such contract. *Marietta Bank* v. *Pindall*, 2 Rand. (Va.), 465; see *Slaughler* v. *Commonwealth*, 13 Gratt. (Va.), 767; *British American Lead Co.* v. *Ames*, 6 Metc. (Mass.), 391; *Portsmouth Livery Co.* v. *Watson*, 10 Mass., 91; *American Ins. Co.* v. *Owen*, 15 Gray (Mass.), 491; *New York Dry Dock* v. *Hicks*, 5 McLean, 111; *Holcomb* v. *Illinois Canal*, 2 Scam. (Ill.), 236; *Frazier* v. *Wilcox*, 4 Rob. (La.), 518; *Lewis* v. *Kentucky Bank*, 12 Ohio, 172.

note, in the declaration mentioned, was made to and for the purpose of same being discounted by the plaintiff, exercising such banking privileges as aforesaid, on the day and year and at the place aforesaid, and that the plaintiff did discount the said note, and issue therefor its note and bills, in the exercise of the banking franchise aforesaid, contrary to the laws of Alabama, by reason whereof the said note was void.

4th. That there was no such corporation as the plaintiff had in that behalf averred in his declaration.

The plaintiff joined issue on the first and fourth pleas, and demurred to the second and third. And upon the hearing of *17] the *demurrers, the District Court held that these pleas were sufficient in law to bar the plaintiff of its action, and gave judgment in favor of the defendant. From this judgment the present writ of error is brought.

The case was submitted to the court without argument by the Attorney-General, for the plaintiff in error, referring the court to 13 Pet., 519. No counsel appeared for defendant.

Mr. Chief-Justice TANEY delivered the opinion of the court.

The only question arising on this record is, whether, by the laws of Alabama, a contract made in that State by the agents of a corporation created by the law of another State is valid. This point was fully considered and decided in the case of the *Bank of Augusta* v. *Earle*, 13 Pet., 519, and cannot now be considered as open for argument in this court. The principles decided in that case must govern this; and the judgment of the District Court is therefore reversed, with costs.

ALEXANDER LEVI *v.* JOHN THOMPSON ET AL.

The holder of a register's certificate of the purchase of a lot in the town of Dubuque, lawfully acquired, and issued by the register under the two acts of 2d July, 1836, and 3d March, 1837, has such an equitable estate in the lot, before the issuing of a patent, as will subject the lot to sale under execution, under the statute of Iowa.[1]

The doctrine established in the case of *Carroll* v. *Safford*, 3 How., 441, reviewed and confirmed.

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[1] In *Rhea* v. *Hughes*, 1 Ala. (N. S.), 219, it was decided that the mere possession and improvement of land belonging to the United States, however valuable, was not the subject of levy under an execution. But it was said