same land, equally inchoate, and the government, being unable to confirm both, was under the necessity of determining between them; and, having granted the land to one, necessarily rejected the pretension of the other to the same land; and therefore the first grantee took the legal and exclusive title. But where there is a second confirmation, as in the instance before us, then the justice of the government must be relied on by the second grantee for compensation; and this compensation the act of 1836 has provided. The last ground is the one on which the decision in the case of *Chouteau* v. *Eckhart* proceeded, in regard to the St. Charles common; and which doctrine, we think, applies equally to the present controversy.

For the several reasons above stated, it is ordered that the judgment of the Circuit Court be affirmed.

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*465] *THOMAS BROWN, PLAINTIFF IN ERROR, *v.* THE UNION BANK OF FLORIDA, DEFENDANT IN ERROR.

Where there has been no service of a citation, or no final judgment in the court below, the case must be dismissed on motion.[1]

THIS case was brought up, by writ of error, from the Court of Appeals for the Territory of Florida.

A motion was made by *Mr. L. A. Thompson* to dismiss it, upon two grounds:—

1. Because there was no service of the citation upon the defendant in error.

2. Because the judgment of the Court of Appeals of Florida, remanding the cause for a new trial below, was not a final judgment.

The case was this.

On the 5th of April, 1842, the Union Bank of Florida brought a suit against Thomas Brown, upon the following single bill:—

"TALLAHASSEE, *March 14th*, 1841.

"Dolls. $22,266\frac{34}{100}$

"One month after date I promise to pay to the Union Bank of Florida, at their banking-house, in the city of Tallahassee, twenty-two thousand two hundred sixty-six $\frac{34}{100}$ dollars, for value received; for securing payment whereof, I do hereby

[1] FOLLOWED. *Moore* v. *Robbins*, 20 Id., 654; *Bostwick* v. *Brinkerhoff* 18 Wall., 588; *Parcels* v. *Johnson*, 16 Otto, 4.

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pledge my shares in the capital stock of said bank. Witness my hand and seal.

"THOMAS BROWN. [L. S.]"

The defendant pleaded the general issue, four special pleas, and payment. To the pleas of the general issue and payment, the plaintiff filed a general replication; a general demurrer to the second, third, and fourth, and a special demurrer to the fifth plea. These demurrers were all sustained, and the cause came on for trial upon the general replication to the first and sixth pleas. The plaintiff made fourteen prayers to the court, ten of which were granted, and four refused. The defendant made two prayers, both of which were granted. The court then gave eight instructions to the jury. Under all these directions, the jury found a verdict for the defendant. The plaintiff excepted to the refusal of the court to grant his four prayers, to the granting of the two asked by the defendant, and to five out of the eight instructions given by the court.

The case went up to the Court of Appeals of Florida, which, on the 20th of February, 1844, gave the following judgment:—

"It seems to the court here, that there is error in said judgment. Therefore, it is considered by the court, that the said judgment be reversed and annulled; and it is further ordered, that the verdict *rendered in this cause be set [*466 aside, and that this cause be remanded to the court below, with instructions to said court to award a *venire facias de novo*, for a new trial of the issues to be had therein, and that the plaintiff in error recover against the defendant in error $ his costs by him about his said writ of error herein expended; which is ordered to be certified to the court below."

From this judgment, a writ of error brought the case up to this court.

The motion to dismiss was made and sustained by *Mr. Thompson* and *Mr. C. Cox*, on behalf of the defendant in error, and opposed by *Mr. Brockenborough* and *Mr. Eaton*, on behalf of the plaintiff in error.

Mr. Thompson, to sustain the first ground of dismissal, namely, that no citation had been served, cited Conk. Pr., 446, and 1 Cranch, 365.

And in support of the second ground, namely, that the judgment was not final, cited 3 Story's Laws, 2224; 8 Laws United States, 707; Bingh. on Judgments, 3; 4 Dallas, 22;

3 Wheat., 433; 12 Id., 135; 3 Dallas, 48; 4 Wheat., 73; 6 Id., 448.

Mr. Brockenborough, in opposition to the motion, contended that the writ of error was sued out in open court, in which case no citation was necessary; that the act of 1832 placed writs of error and appeals on the same footing, and cited and commented on the acts of 1832 (4 Story, 2330), 1803, 2 Cranch, 349; 7 Pet., 220; act of 1826, 3 Story, 2024.

Mr. Justice McLEAN delivered the opinion of the court.

A motion is made to dismiss this writ of error, because the judgment of the court below was not final, and there has been no service of the citation.

The motion is granted. The judgment below reversed the judgment of an inferior court, and remanded the cause to that court, with instructions to award a *venire facias de novo;* it was, therefore, not a final judgment, on which only a writ of error can issue.

Order.

This cause came on to be heard on the transcript of the record from the Court of Appeals for the Territory of Florida, and it appearing on the motion of *Mr. Thompson*, of counsel for the defendant in error, that there has been no service of the citation in this cause, it is therefore now here ordered and adjudged by this court, that this cause be, and the same is, hereby dismissed, with costs.

January 12*th.*

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*467] *ASPDEN AND OTHERS, COMPLAINANTS, *v.* NIXON AND OTHERS, DEFENDANTS.

Where a person domiciled in England died, leaving property both in England and Pennsylvania, and the executor took out letters testamentary in both countries, in a suit in England against the executor by the administrator of a deceased claimant, the parties were restricted to the limits of the country to which their letters extended.[1]

The executor could not rightfully transmit the Pennsylvania assets to be distributed by a foreign jurisdiction.

So, the administrator of the deceased claimant, acting under letters granted in England, only represented the intestate to the extent of these English letters, and could not be known as a representative in Pennsylvania.

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[1] IN POINT. *Hill* v. *Tucker*, 13 How., 467. CITED. *Taylor* v. *Benham*, 5 How., 262.