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exception to all the adopted members of the tribe. But there is nothing in the treaty in conflict with the construction we have given to the law. The fifth article of the treaty stipulates, it is true, that the United States will secure to the Cherokee nation the right, by their national counsels, to make and carry into effect such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them. But a proviso immediately follows, that such laws shall not be inconsistent with the Constitution of the United States, and such acts of Congress as had been, or might be, passed, regulating trade and intercourse with the Indians. Now the act of Congress under which the prisoner is indicted had been passed but a few months before, and this proviso in the treaty shows that the stipulation above mentioned was not intended or understood to alter in any manner its provisions, or affect its construction. Whatever obligations the prisoner may have taken upon himself by becoming a Cherokee by adoption, his responsibility to the laws of the United States remained unchanged and undiminished. He was still a white man, of the white race, and therefore not within the exception in the act of Congress.

We are, therefore, of opinion, that the matters stated in the plea of the accused do not constitute a valid objection to the jurisdiction of the court, and that, if he is found guilty upon the indictment, he is liable to the punishment provided by the *574] act of Congress before referred to, and is not within the exception in relation to Indians. *And we shall direct this opinion to be certified to the Circuit Court, as the answer to the several questions stated in the certificate of division. We abstain from giving a specific answer to each question, because, as we have already said, some of them do not appear to arise out of the case, and, upon questions of that description, we deem it most advisable not to express an opinion.

JOHN A. BARRY, PLAINTIFF IN ERROR, v. MARY MERCEIN
AND ELIZA ANN BARRY, DEFENDANTS.

After a case has been called, and placed at the foot of the docket, the court cannot take it up, on motion, and assign a day for its argument, when other cases, of great public importance, have already been assigned for what may be the remainder of the term.

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THE circumstances which led to the interlocutory opinion of the court in this case are sufficiently set forth in the memorial of Mr. Barry, and the opinion of the court.

The memorial was as follows:—

“To their Honors, the Justices of the Supreme Court of the United States of America.

“The memorial of John A. Barry respectfully represents, that he is a British subject, domiciled and resident abroad within the dominions of her Britannic Majesty; that, for some considerable time past, he has had upon the docket of this honorable court a highly important and most interesting case, on a writ of error to the Circuit Court for the Southern District of New York; that consequently, he came over to these United States in November, 1844, to attend to the said case at the last term of this honorable court; but the number of the case being 128, he was greatly disappointed in being obliged to return to his home without its having been reached; that he has now again come over to this country for the purpose of meeting the said case; but, owing to an unusual length of passage, did not arrive at Boston until after this honorable court had commenced its present session; that it was his intention, and full expectation, to have been before this honorable court whenever the said case (No. 72) on the present calendar should be called; but, owing to an attack of bodily indisposition, he was detained in New York until he became apprehensive that he might not be enabled to be present at the call of the said case in its regular order; that he thereupon wrote a letter to W. T. Carroll, Esq., the clerk of this honorable court, intimating his said apprehension, in order that, should it be realized, the cause thereof might be communicated to *your Honors, in the hope that, under [*575 the circumstances, your Honors would be pleased to permit the case to be passed over without prejudice until your memorialist's arrival in Washington; that he received an answer from the said W. T. Carroll, Esq., acknowledging his receipt of the said letter, but informing your memorialist, that unfortunately, the case had been reached only the day before, when, agreeably to the forty-third rule of court, the said case was placed at the foot of the calendar; that, in the event of its so remaining, your memorialist will, if he shall live, be necessitated to come again—a third time—to this country, at the next sitting of this honorable court, as no probability exists that the case can be reached, in its new position, during the present term.

“Your memorialist, therefore, respectfully prays, that, in

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consideration of the foregoing premises, and further, that the case is one in relation to the writ of *habeas corpus*, in favor of liberty, in proceedings on which courts are accustomed to relax that stringency of technical requirements so strenuously adhered to and insisted on in ordinary formal suits at law, the said forty-third rule of court may not be enforced on the present occasion; but that your memorialist may be heard in the matter at such earlier day as may comport with the convenience of your Honors, or be appointed for the purpose by this honorable court.

JOHN A. BARRY.

"Washington, D. C., February 6th, 1846."

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

In the case of *John A. Barry v. Mary Mercein* and *Eliza Ann Barry*, a motion was made on Friday last by the plaintiff in error to assign some day during the present term for the argument. A petition was filed at the last term by one of the defendants in error, praying that the writ of error might be dismissed for want of jurisdiction. The case in the regular order of business was called on the 15th day of January last, and neither party appearing, it was, according to the rules of the court, placed at the foot of the calendar; and it is now evident, from the number of cases standing before it, that it cannot be reached during the present term, unless by a special order of the court giving it priority.

There are two questions in the case, both of them grave and serious ones;—1st. Whether this court have jurisdiction upon a writ of error in a case like this; and, 2d. If it should be determined that it has jurisdiction, then, whether the Circuit Court committed an error in refusing to award the *habeas corpus*.

As this controversy, while it continues undecided, must be a painful one to the parties on both sides, the court feel every disposition to bring it to a speedy hearing, if it could be done without injustice to others; and if the motion to assign a day was liable to no other objection than that it would be a *576] departure from the order of business prescribed by the rules, there would be no difficulty *in making this case an exception, and assigning a day for the hearing.

But at the present period of the term, the assignment of a particular day for the trial of this case involves other and higher considerations than that of a mere departure from established rules. In four or five weeks, at farthest, the court will be compelled to close its session, in order to enable its

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members to perform their duties at the circuits; and several important cases, some of which cannot be continued without producing much public inconvenience in three or more of the states, have already been specially assigned for argument, and the order in which they are to be taken up announced from the bench; and in obedience to this notice counsel have been for some time past, and still are, attending to argue them. It is very doubtful whether enough remains of the term to enable the court to dispose of these cases, and it is probable that one or more of them may of necessity be continued. Under such circumstances, we cannot, without injustice to others and inconvenience to the public in several of the states, make a new and unexpected arrangement in the order of business, by which another case, not entitled to priority, is interposed out of its proper order. The case in question must, therefore, stand over until the next term.

EDWARD BRADFORD, PLAINTIFF IN ERROR, *v.* ROBERT W. WILLIAMS, DEFENDANT, AND JOHN JUDGE, PLAINTIFF IN ERROR, *v.* ROBERT W. WILLIAMS, DEFENDANT.

By a statute of Florida, where suit is brought upon a bond, the plaintiff need not prove its execution unless the defendant denies it under oath. It also provides that such an instrument may be assigned; that the assignee becomes vested with all the rights of the assignor, and may bring suit in his own name.

Under this statute, where a joint and several bond was signed by three obligors and made payable to three obligees, one of whom was also one of the obligors, and the obligees assigned the bond, the fact that one of the obligors was also an obligee was no valid defence in a suit brought by the assignee against the two other obligors.

The inability of one of the obligees to sue himself did not impair the vitality of the bond, but amounted only to an objection to a recovery in a court of law. The assignment, and ability of the assignee to sue in his own name, removed this difficulty.¹

The statute of Florida places bonds, as far as respects negotiability and the right of the assignee to sue in his own name, upon the same footing as bills of exchange and promissory notes. The case, therefore, falls within the principle of a partner drawing a bill upon his house, or making a note in the name of the firm, payable to his own order, both of which are valid in the hands of a *bond fide* holder.

THESE were kindred cases, argued and decided together. Bradford and Judge were obligors upon the same bonds,

¹See *Ransom v. Geer*, 12 Fed. Rep., 603.