But in this case, it appears by the protest that the Merchants' Bank, at which it was payable, was the holder of the bill, and that the notary presented it for payment at the bank, and demanded payment thereof, and was answered that it could not be paid. According to the current of authorities, nothing more need be stated in the protest of a bill of this kind, payable at a bank, and of which the bank is the holder, and it is not necessary to give the name of the person or officer of the bank to whom it was presented, or by whom he was answered. Neither does the statement in this case, that it was presented to the proper officer of the bank, give any additional validity to this protest. For when the law requires the bill to be presented to any particular person or officer of a bank, the protest must show that it was presented accordingly, and it would not be sufficient, to say that he presented it to the proper person or proper officer. In this case, however, the presentment and demand at the place where it was
*72] made payable is all that was *necessary, and as this appears to have been done, the protest ought to have been received in evidence, and we shall cause it to be certified accordingly to the Circuit Court.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which were certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this court that the protest offered in this case ought to have been received as evidence; wherefore, it is now here ordered and adjudged that it be so certified to the said Circuit Court.

HENRY MILLER, ADMINISTRATOR OF GEORGE MILLER, DECEASED, PLAINTIFF IN ERROR, *v.* BETSEY HERBERT AND CAROLINE HERBERT, DEFENDANTS IN ERROR.

Under a statute of Maryland passed in 1796, a deed of manumission is not good unless recorded within six months after its date; and this law is in force in Washington county, District of Columbia.

The statutes and decisions of Maryland examined.

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THIS case was brought up, by writ of error, from the Circuit Court of the District of Columbia, for the county of Washington.

The defendants in error filed their petition in the Circuit Court, by which they claimed a right to their freedom, under a deed of manumission executed to them on the 28th of February, 1842, by their owner, George Miller, who was an inhabitant of Washington county, at the date of the deed, and at the time of his death, and on whose estate the plaintiff in error had taken administration.

The petition, setting out the character of the claim of the defendants in error, was in the following words.

To the Honorable, Judges of the Circuit Court of the District of Columbia for Washington County:

The petition of Betsey Herbert and Caroline Herbert humbly showeth, that your petitioners were the slaves of George Miller, late of the city of Washington, deceased; that the said decedent, in his lifetime, intending to manumit and set free from slavery your petitioners, caused to be prepared a paper-writing for that purpose, and sent for S. Drury, Esq., a justice of the peace of said county, *to take his acknowledgment hereof, and also Charles Bowerman and [*73 John Hoover to witness the execution thereof; that on the 28th day of February, 1842, the said justice and the said witnesses came to the house of said George Miller, and the said George Miller did then and there, in the presence of the said witnesses, execute the said paper-writing, and did acknowledge the same before the said justice of the peace; but the said witnesses neglected to sign, or did not understand that they were called upon to sign, the said instrument as witnesses; that the said George Miller retained the said paper-writing in his possession until some short time before his death, when he gave it to your petitioners, with instructions to place it in the hands and follow the directions of Mr. John McLelland, of this city, which your petitioners did; and the said John McLelland, discharging the said trust, placed the said paper-writing in the hands of Joseph H. Bradley, Esq., an attorney of this court, who lodged the said paper in the Orphans' Court of the county aforesaid.

Your petitioners claim that, by the said paper-writing, so executed and delivered, they are entitled to their freedom, and they are advised it was not necessary that the said paper should have been signed by said witnesses, and that the same is a good and operative deed. But if the said deed ought to have been signed by said witnesses, they claim that this

court, acting as a court of chancery, will permit the execution thereof to be proved now, and will decree the said deed to be put on record.

They further show that, after the delivery of the said deed to your petitioners, the said George Miller departed this life intestate, and that Henry Miller administered on his estate, and now claims them as part of the personal estate of said George Miller, and they pray that he may be summoned and required to show cause why the paper-writing shall not be admitted to record, and your petitioners declared free.

JOSEPH H. BRADLEY, *for petitioners.*

The counsel for the respective parties then filed the following agreement:—

Agreement of Counsel.

It is agreed, that if this court shall be of opinion that they would have power, sitting in chancery, to decree the record of the deed, the execution of which was imperfect under the law, because the witnesses did not sign it, "in such case this court shall have the same power to decree or adjudge the said defect to be rectified as it would if sitting as a court of chancery," it being distinctly understood that the facts are not admitted, but proof thereof is required, and the defendant is to offer any legal proof to meet the petitioners' case; and the petitioners are to sustain their petition by competent proof. It being the object of this agreement to avoid the *74] expense *of a bill in chancery, and to bring all the questions which may arise at law or in equity before the court under the petition.

JOSEPH H. BRADLEY, *for Petitioners.*
WILLIAM L. BRENT, *for Defendant.*

The instrument relied on in support of the petition, as the deed of manumission from George Miller, and referred to in the bill of exceptions as paper marked A., was in these words:—

To all whom it may concern, be it known that I, George Miller, of Washington county, District of Columbia, for divers good causes and considerations me thereunto moving, have released from slavery, liberated, manumitted and set free, and by these presents do hereby release from slavery, liberate, manumit, and set free, my negro women, one named Betsey Herbert, about forty-two years of age, and the other named Caroline Herbert, about seventeen years of age, both

able to work and gain a sufficient livelihood and maintenance; and they, the said negro women, named Betsey Herbert and Caroline Herbert, I do declare to be henceforth free, manumitted, and discharged from all manner of service or servitude to me, my executors or administrators, forever.

In witness whereof I have hereunto set my hand and seal, this 28th day of February, in the year of our Lord one thousand eight hundred and forty-two.

GEORGE MILLER. [*Seal.*]

District of Columbia, Washington County, to wit:

Be it remembered, and it is hereby certified, that on this 28th day of February, in the year of our Lord eighteen hundred and forty-two, personally appeared before me, a justice of the peace in and for said county and district, George Miller, and acknowledged the foregoing deed or manumission to be his act and deed for the purposes therein mentioned, as witness my hand and seal.

SAMUEL DRURY, *J. P.* [*Seal.*]

Issue having been joined upon the right alleged in the petition, and a jury been empannelled to try that issue, the following bill of exceptions was, at the trial, sealed by the judges.

Defendant's Bill of Exceptions.

Betsey and Caroline Herbert, v. *Henry Miller*, Administrator of George Miller.

The plaintiffs offered evidence tending to prove that George Miller, who owned and held the slaves, petitioners, sent for a magistrate, Mr. Drury, and also two witnesses to witness the paper marked A., which paper was signed by said Miller in the presence of said witnesses, and acknowledged before said Drury, but was not then, and never was, signed by said intended attesting witnesses, before whom and in whose presence said Miller admitted the deed to be his, and desired said witnesses to attest to the same; to the *reading of said paper in evidence the defendant objected, and said objection was overruled and excepted to by the defendant. The defendant then offered evidence tending to prove that the paper marked A. was, immediately upon the death of the maker, Miller, which took place about eighteen months after the execution thereof, delivered to Mr. McLelland, by the petitioners, who stated that it was so done by the direction of Miller, and who also stated that they held possession of the paper from the time of its execution until [*75

that time, and also that Miller, the grantor in said paper A., died largely indebted, and left no property other than said petitioners, sufficient to pay his debts; and also, that defendant has regularly and duly administered upon the estate in this county of said deceased. Whereupon the defendant, by his counsel, moved the court to instruct the jury that upon the evidence aforesaid the plaintiffs are not entitled to recover; which instruction was refused by the court, and the defendant excepts to said refusal, and prays that this his several bills of exceptions may be signed, sealed, and enrolled, which is accordingly done.

W. CRANCH, [*Seal.*]
B. THURSTON. [*Seal.*]

The jury, under the instructions given by the court, found a verdict for the petitioners, viz. that they were free.

To review these two decisions of the court, the case was brought up by writ of error.

It was argued by *Mr. Coxe*, for the plaintiff in error, and *Mr. Lawrence*, for the defendants in error.

Mr. Coxe, for the plaintiff in error, insisted that there was error. First, in admitting the instrument A. to be read in evidence to the jury; and, second, in refusing to instruct the jury that upon the said instrument, which was not recorded within eighteen months after the date, nor at any time during the life of George Miller, the petitioners could not recover.

Mr. Lawrence, for defendants in error.

The only facts which can be taken into consideration, in this case, are those which appear in the record. Those facts afford no ground for the assumption, on the other side, that the deed of manumission, now in controversy, was retained in the possession of the grantor until the time of his death, and there is, consequently, no foundation for the argument that has been advanced,—that although this deed was, on the face of it, to take effect *in presenti*, yet it was, as matter of fact, to take effect *in futuro*.

As to the remarks that have been made upon the double aspect in which the petition in the court below is regarded, that is, as a petition for freedom, and in the nature of a bill in equity, this court is referred to the agreement which is made part of the record, and *in which every defect that a court of chancery is competent to remedy, is

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to be considered as having been already remedied. This agreement is of special importance, in regard to any objection that might arise in consequence of the deed having been received in evidence in its then existing state.

The whole argument, for the plaintiffs in error, proceeds upon the ground that there was only one class of deeds comprehended in the act of 1796, or, that if there were two classes, they were both to be authenticated in the same manner. I maintain that there were two classes of deeds to be differently authenticated; the one, to take effect *in presenti*, and to be "evidenced" by two witnesses; the other, to take effect *in futuro*, and to be acknowledged and recorded.

This was a deed of immediate emancipation, and was "evidenced" by two witnesses. It is to be presumed that the legislature, in omitting the ordinary and technical words, "attested and subscribed," and making use of a word hardly known in legal phraseology, did so understandingly. This is especially the case, when it is remembered that prior to the act of 1752 (almost in the same words as that of 1796), there was no restraint in the manumission of slaves. Those acts were in restraint of a common right. The word "evidenced" is a verbal derivative from the term evidence, and is equally extensive in signification, unless there is some technical usage to restrict it. There is no such technical usage. Evidence is a word of the largest signification known to the law, and embraces every kind of proof. Jac. Law Dic.; 3 Co. Litt., 487; 1 Greenl. Ev., 1; 3 Bl. Com., 367. Wherever any word implying proof, other than the words "attested" or "subscribed," has been used, the uniform decision (except in Maryland) has been, that the subsubscription of the names is not necessary. 2 Tuck. Black., 308, note; *Turner* v. *Stip*, 1 Wash. (Va.), 322; 4 Kent Com., 514; 6 Cruise Dig. (Am. ed.), 44, 47, notes.

The case of *James* v. *Gaither*, 2 Harr. & J. (Md.), 176, has been cited as the Maryland construction of the act of 1796, and as decisive of this case. That case is not of local authority here, in the sense in which this court usually defers to the local construction of local laws. By the act of Congress, the laws of Maryland, then in force, were made the laws of the District of Columbia. But, if it were otherwise, this court would examine the subject *de novo*. *Fenwick* v. *Chapman*, 9 Pet., 461; *Wallingsford* v. *Allen*, 10 Id., 593. See opinion of the judges, *seriatim*, on the case of *James* v. *Gaither*, in 7 Leigh (Va.), 300 *et seq.* But admitting the construction of the Maryland Court of Appeals, in *James* v. *Gaither*, to be correct, it touches this case only in a single

point, viz. in the meaning it gives to the term "evidenced." That was a case of future emancipation, and the court decide, *77] that in such a case the *deed must not only be acknowledged and recorded, but also "evidenced" by two witnesses. But it does not decide that the converse of the proposition is true; that deeds *in presenti* must not only be "evidenced," but also acknowledged and recorded. Admit, then, that the act requires the witnesses to subscribe their names, can a court of chancery require or permit it now to be done? There is no time limited, in which it must be done. The act does not, like the statute of wills, require it to be done at the time. Whenever done the terms of the law are satisfied. What is it that is asked?—that the requisitions of the act should be set aside? that merely fictitious names should be inserted, to present to the eye only a compliance with the statute? By no means. But that those who actually were witnesses to the deed should be permitted to put their names to it. The deed, when thus perfected, would present a literal, substantial, and conscientious fulfilment of the requisites of the act.

But it has been objected, that this deed was in prejudice of creditors. To this the anwser is, that there is no evidence, in the record, that the grantor was indebted at all, at the time of the execution of the deed. Proof of this fact is necessary. It is, indeed, stated that he died, leaving no other property sufficient to pay his debts. This is too general from which to infer (if this court could indulge in any inference as to the facts) that he was indebted eighteen months before. The decisions, under the 13 Eliz., have uniformly been, that a voluntary deed cannot be avoided by creditors, unless it is shown that the grantor was indebted at the time of its execution; and, in that case, there is a personal disability, and the deed is void, *ab initio*. 4 Cruise Dig., 461, 462; 1 Atk., 93, 94; 1 Madd., 419, 420; 3 Johns. (N. Y.) Ch., 490, 493. But, in this case, there was no such disability shown at the execution of the instrument. The grantor, having done every thing, on his part, had parted with all power over the subject. The act of subscribing, by the witnesses, was merely formal, and no time limited in which it should be done. And although, until that act should be performed, freedom might not pass, still no act of the grantor then could revoke the deed. This view is illustrated by the case of a bargain and sale, under Stat. 27 Hen. 8, requiring enrolment before lands, &c., should pass. It has been decided, under that statute, that if the bargainer dies, or aliens the land, or marries, or becomes bankrupt, after the execution of the deed, and be-

fore its enrolment, and then within the time limited the deed is enrolled, it overrides any and all of these intermediate acts, and takes effect, by relation, from the time of its execution. Shep. Touch., 224, 226; 2 Vin. Abr., 419; 1 Bac. Abr., 688; 7 Leigh (Va.), 696, 711, 712. There can be no difference, as to the law of relation, whether the formal act, remaining to be done, be enrolment or attestation; nor whether a time be or be not limited in the statute.

*As to the aid which courts of equity will extend in carrying into effect instruments of emancipation, cited 1 Hen. & M. (Va.), 519; 2 Id., 132; 1 Leigh (Va.), 465; 6 Rand. (Va.), 162. [*78

Mr. Justice DANIEL, after having read the statement of the case at the commencement of this report, proceeded to deliver the opinion of the court.

By the statute of Maryland, passed in 1715, cap. 44, § 22, it is enacted,—"That all negroes, and other slaves then imported, and their children, then born or thereafter to be born, shall be slaves for life." Upon examining the legislation of Maryland, from the period of the law of 1715, a variety of enactments will be seen, showing the policy of this State in the government of her slave population; and, as entering essentially into that policy, must be considered the several regulations under which she has permitted manumission, either by deed or by will. The enactment here referred to may be found in Kilty's Laws, vol. 1, session of 1752, cap. 1, where they are collated, by their dates, down to the act of December 31st, 1796, under which last mentioned statute the questions now before this court have immediately arisen. In the interpretation given to these statutes by the tribunals of the State, one characteristic will impress itself on every mind; and that is, the strictness with which the laws have been expounded in reference to the power of manumission conferred by them. It seems to have been thought that very little, or indeed nothing, was permitted by the policy of the State to construction or implication, but that rather the conditions prescribed for the exercise of the power conceded should be fulfilled almost to the letter. Of the propriety of views such as these, on the part of the State, with regard to her own internal policy, no just ground of complaint can be alleged; but of the reality of those views, a reference to a few of the adjudications of her courts will leave no doubt. By the Stat. of 1752, cap. 1, § 5, manumission was allowed, by writing under bond and seal, "evidenced by two good witnesses at least." Under this statute arose the case of negro *James* v.

Gaither, which was a claim to freedom, upon a writing signed and sealed, but subscribed by a single witness only. Parol proof being offered to establish the fact, that the deed was executed in the presence of another witness, who did not attest it by subscription, the Court of Appeals ruled such proof to be incompetent and inadmissible under the statute. See 2 Harr. & J. (Md.), 176.

The case of *Wicks* v. *Chew et al.*, 4 Harr. & J. (Md.), 543, a case arising under the statute of 1796, is yet more strongly illustrative of the rule above mentioned. By the statute just referred to, chap. 67, § 29 (Kilty's Laws), deeds of manumission are required to be recorded within six months from their date. By another statute of Maryland, passed in 1785 *79] (Kilty's Laws, chap. 72), it is *provided, in the third section thereof,—"That in case any deed hath been or hereafter shall be executed, to the validity of which deed *recording* is necessary, and such deed hath not been or shall not be recorded agreeably to law, without any fraudulent intention of the party claiming under the same, the chancellor, upon petition of the party to whom the said deed was executed, or of his, her, or their legal representative, or of any of them claiming the land or *other thing* conveyed or intended to be conveyed by such deed, and without the appearance or hearing of the defendant or defendants, shall have power to decree the recording of the said deed in the county or general court records, within such time from the date of the decree as it ought originally to have been recorded from the date of the deed"; giving to the deed, when thus admitted to record, the same effect it would have had if the irregularity thus cured had never occurred. Chew and others, claiming freedom under a deed from Darnell, against Wicks and others, heirs and devisees of Darnell, filed their petition with the chancellor, stating that Darnell had died without putting the deed on record within the six months prescribed by law, and praying the chancellor, upon due notice to the heirs and devisees, to decree that the deed be recorded, that thereby validity might be restored to it. The chancellor, deeming himself so authorized by the third section of the act of 1785, decreed that the deed be admitted to record within six months from the date of his decree. The Court of Appeals reversed this decision of the chancellor, and the reasoning of the court conclusively shows the principle on which they place these instruments of manumission, and on which they distinguish them from transactions with a party who is *sui juris*. They declare that the statute of 1785 embraces only cases of mutual but inchoate rights, but still of rights founded on some valid

consideration, such as courts can take notice of and enforce; that manumission by the laws of Maryland is a mere gratuity, and until evidenced by all the acts or requisites the law prescribes, has no legal existence, and can have created no faculty in the contemplated object of that gratuity. The language of the Court of Appeals is as follows:—"The acts of assembly referred to (i. e. by the chancellor in support of his decree) are not intended to give relief in cases which were before without remedy, but to give an additional remedy by enabling a party, acquiring equitable rights under a deed not operative in law for want of recording, to perfect those rights, by applying to the chancellor to order the original instrument to be recorded, and thus to give it the effect which by law it would have had if recorded in due time, instead of going into chancery to compel a conveyance, or enforce a specific performance. They are intended to give an *accumulative* remedy to persons *able to contract*, and who by deed acquire rights which equity will protect, with the power to prosecute those rights. But by the laws of this State, a negro, so long as he is a slave, can have *no rights adverse to those of his master; he can neither sue nor be sued, nor can he [*80 make any contract or acquire any rights under a deed which a court of law or equity can enforce. And as it is the *recording* of a deed of manumission within the time prescribed by law, which entitles him to his freedom, he continues a slave and can acquire no rights under such an instrument until it is so recorded, and consequently cannot go either into a court of law or equity for relief of any kind." Again, the court say in this case, that—"A master may execute and acknowledge a deed of manumission, and afterwards destroy it or keep it, and refuse to have it recorded, and the slave remains a slave without redress." Another striking instance of the rule of interpretation of their own statutes, adopted by the courts of Maryland, is found in the case of negro *Anna Maria Wright* v. *Lloyd N. Rogers*, reported in 9 Gill & J. (Md.), 181. In this case, Tilghman, the owner of the female slave, executed and delivered to her, in 1832, a deed of manumission, which was duly acknowledged but not recorded. Subsequently, Tilghman sold and conveyed the same slave by bill of sale, duly acknowledged and recorded, to a purchaser who had notice at the time of the previous deed of manumission. This purchaser afterwards sold the slave to Rogers, to whom, in 1833, he executed and delivered a bill of sale, which was acknowledged and recorded according to law. The legislature, at their session, December, 1834, passed a special law, authorizing the deed of manumission to be recorded, providing

further that the same when recorded should be as valid and effectual for every purpose as if it had been duly recorded according to law. After the deed had been recorded pursuant to this law, the negro filed her petition for freedom; the judgment of the County Court was against her title, and that judgment was affirmed by the Court of Appeals.

By the 29th section of the statute of 1796 (Kilty's Laws, chap. 67), the power of manumission by writing under seal was reënacted from previous statutes, enumerated, and repealed in the 31st section of the act of 1796. In the 29th section, many of the conditions contained in the prior laws are prescribed, and amongst these are the requisitions, that the slave to be emancipated shall be sound in mind and body, and not over 45 years of age; that the deed of manumission shall not be in prejudice of creditors; that it shall be acknowledged before a magistrate, and entered amongst the records of the County Court where the person or persons granting such freedom shall reside, *within six months from the date of such instrument of writing.* Upon the construction of this section of the act of 1796 arose the questions presented to the court below, and now brought here for adjudication. These questions are various, as appears by the bill of exceptions sealed by the judges of the Circuit Court, and by the assignment of errors upon the record; but they are all necessarily subordinate to a decision upon the validity of the *instrument of manumission as affected by the failure to record it within six months from its date. This omission is admitted in the petition for freedom, and is made out by the proofs upon which the instruction prayed by the defendant in the courts below was asked and refused, and it remains to be considered how far such omission operated to destroy all foundation of the right sought to be asserted in this case. This inquiry, as a question of Maryland law, we think is without difficulty. The decisions already quoted are clear and explicit. They treat the right asserted and the instrument alleged in evidence thereof as having no legal existence, as nullities to all intents and purposes, and therefore as nothing of which common law or equity can take cognizance, until that right and the pretended evidence of it can be brought forward, attended with every mark and attribute of being, which the statute has called for, and one of these, as clearly defined as any other, is *admission to record.* This indeed is treated as the great, the capital test of existence, for it is this which places the transaction definitely beyond the control of the master, and proclaims, beyond the power of denial, both the intent and its consummation. And why should this not

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be treated as a question of Maryland law. The statutes of Maryland in being at the cession of the District of Columbia were adopted as the laws of the county of Washington, to be there enforced until altered by authority of Congress, and the rights of person and of property vested or existing under those laws, and all interpretations of those laws by the supreme tribunal of Maryland, became in like manner the rules of right within the same county. This case, too, is one of a right sought to be maintained under a Maryland statute, a right which seeks to lay its foundation in the terms of that statute, and no where else. But whilst it is conceded as a general proposition that the laws of Maryland, at the period of the cession of the District of Columbia, are laws of the county of Washington till changed by the authority of Congress, it has been urged that, in instances in which the Maryland statutes have received no settled interpretation by the Maryland courts anterior to the cession of this district, the federal courts are free to interpret the provisions of those statutes as they would be to pass upon any other subject of original cognizance, and would not be bound by decisions of the State courts made posterior to the cession. This position is not denied; it has indeed been sanctioned by this court in the cases of *Fenwick* v. *Chapman*, 9 Pet., 461, and *Wallingsford* v. *Allen*, 10 Id., 583. But admitting this position fully, still we must also admit that the courts of the United States would feel great respect for the decisions of the State courts upon questions essentially connected with the general internal policy of the State, nay, would yield to those opinions upon matters of doubtful construction, or wherever well ascertained and paramount obligations did not forbid such an acquiescence. But the statute of 1796 was anterior to the cession of the District of *Columbia; and although the cases of *Wicks* v. *Chew et al.*, 4 Harr. & J. (Md.), and of *Anna Maria Wright* v. *Rogers*, 9 Gill & J. (Md.), were posterior to that event, still these cases cannot be correctly understood as deciding any new question, or as introducing any principle not well settled long before it. The case of *James* v. *Gaither* occurred under the statute of 1752, and upon an instrument of manumission executed in 1784; the statute of 1796, too, is a reënactment of provisions of other statutes, going back as far as the year 1752, and the decision in *James* v. *Gaither*, and in the subsequent cases, are nothing more than the repeated expositions of a settled policy or rule of interpretation of the Maryland statutes, viz. that the conditions prescribed by them must be strictly fulfilled; that without such fulfilment any pretended instrument of manumission must be treated as a nullity, and can impart

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no rights, can give no standing in court, either at law or in equity. We think then that this is a question of Maryland law, which has been settled by the courts of Maryland, and should not now be disturbed; that in conformity with decisions of those courts, the recording of the deed of manumission in this case, within the time prescribed by the statute of 1796, was an indispensable prerequisite to confer any rights on the petitioners in the court below, or to give them any standing in a court of law or equity; that in accordance with this interpretation of the statute, the Circuit Court should have given the instruction asked for by the counsel for the defendants; that in refusing to give such instruction that court has erred, and therefore its decision should be reversed.

In reference to the agreement signed by counsel and annexed to the record in this case, and by which all the powers that a court of equity could properly exert in aid of instruments defectively executed were conceded to the Circuit Court as if sitting as a court of equity, we remark that the grounds presented by that agreement are entirely covered by the opinion above expressed of the absolute nullity of the deed in question, it being no more within the powers of a court of equity than it is within those of a court of law, to set up and establish that which is illegal or wholly void.

ORDER.

This case came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Washington, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Circuit Court, with directions to award a *venire facias de novo*.

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*83] *THE ALEXANDRIA CANAL COMPANY, PLAINTIFF IN ERROR, *v.* FRANCIS SWANN, DEFENDANT.

Where a case is removed from Alexandria county to Washington county, in the District of Columbia, whatever defences might have been made in Alexandria county, either as to the form of the action or upon any other ground, or whatever would have been a bar to the action, may all be relied upon in the new forum.