SAMUEL MARSH, WILLIAM E. LEE, AND EDWARD C. DELAVAN, PLAINTIFFS IN ERROR, *v.* EDWARD BROOKS AND VIRGINIA C., HIS WIFE, FORMERLY VIRGINIA C. REDDICK, CHARLES P. BILLOU AND FRANCES E., HIS WIFE, FORMERLY FRANCES E. REDDICK, WALTER J. REDDICK AND DABNEY C. REDDICK BY ELIZA M. REDDICK, THEIR GUARDIAN, HEIRS AT LAW OF THOMAS F. REDDICK, DECEASED, DEFENDANTS IN ERROR.[1]

The plaintiff in a writ of right produced a patent from the United States, dated in 1839, which contained sundry recitals, referring to titles of anterior date derived from acts of Congress for the adjustment of claims to lands. But the patent itself was issued under an act of Congress in 1836.

The defendant, in order to show an outstanding title, gave in evidence a treaty between the United States and the Sac and Fox Indians, in which this, with other lands, was reserved for the half-breeds, and an act of Congress passed in 1834 relinquishing the reversionary interest of the United States to these half-breeds.

This was sufficient to show an outstanding title.

The recitals in a patent are not enough to show that the title is of an earlier date than the patent itself, although they are evidence for some purposes. Nor was it necessary for the defendant to show that any of the half-breeds were in existence at the time of the trial.[2]

THIS case was brought up, by writ of error, from the Supreme Court of Iowa. It was a proceeding in the nature of an ejectment, to recover 640 acres on the right bank of the Mississippi River. The suit was brought by the heirs of Reddick against one Kilbourn, who was the tenant in possession. By agreement of counsel filed after the suit was brought, it was admitted that the defendants in error were the heirs of Thomas F. Reddick, and the plaintiffs in error were substituted in the place of Kilbourn.

*The facts were these:

[*224

On the 4th of August, 1824, a treaty was made between the United States and the Sac and Fox Indians, by the first article of which the Indians ceded to the United States the lands described as follows, viz.:—"Within the limits of the state of Missouri, which are situated, lying, and being between the Mississippi and Missouri Rivers, and a line running from the Missouri at the entrance of Kansas River north one hundred miles to the northwest corner of the state of Missouri, and from thence east to the Mississippi. It being understood, that the small tract of land lying between the rivers Des Moines and the Mississippi, and the section of the above

[1] Further decision, 14 How., 513.

[2] CITED. *Bryan* v. *Shirley et al.*, 53 Tex., 459.

line between the Mississippi and Des Moines, is intended for the use of the half-breeds belonging to the Sac and Fox nations, they holding it, however, by the same title and in the same manner that other Indian titles are held."

On the 30th June, 1834, Congress passed an act (4 Stat. at L., 740,) entitled, "An act relinquishing the half-breed lands." It relinquished all the right, title, and interest which might accrue to the United States in the above reservation, and vested the land between the rivers Des Moines and Mississippi, above mentioned, in the half-breeds of the Sac and Fox tribes of Indians, who were, at the passage of the act, entitled by the Indian title to the same, with full power and authority to transfer their portions thereof, by sale, devise, or descent, according to the laws of the state of Missouri.

Both of these documents covered the land in dispute.

On the 1st of July, 1836, Congress passed an act, (6 Stat. at L., 661,) relinquishing to the heirs of Thomas F. Reddick all the right, title, claim, and interest which the United States had to a certain tract of land (understood to be the land in dispute), with the following proviso:—

"Provided, nevertheless, if said lands shall be taken by any older or better claim not emanating from the United States, the government will not be in any wise responsible for any remuneration to said heirs; and, provided, also, that, should said tract of land be included in any reservation heretofore made, under treaty with any Indian tribe, that the said heirs be, and they hereby are, authorized to locate the same quantity in legal sub-divisions on any unappropriated land of the United States in said territory, subject to entry at private sale."

On the 7th of February, 1839, a patent was issued by the United States to Thomas F. Reddick, for the land in controversy, which contained the following recital, viz.:—

*225] *"The United States of America, to all to whom these presents shall come, greeting:

"Know ye, that Thomas F. Reddick, assignee of the estate of Joseph Robidoux, assignee of Louis Honore Tesson, has deposited in the General Land Office, a certificate numbered one thousand one hundred and fifty-seven, of the recorder of land titles at St. Louis, Missouri, whereby it appears that, in pursuance of the several acts of Congress for the adjustment of titles and claims to lands, the said Thomas F. Reddick, assignee of the estate of Joseph Robidoux, assignee of Louis Honore Tesson, has been confirmed in his claim to a tract of

land containing six hundred and forty acres, bounded and described as follows, to wit," &c., &c.

On the 10th of July, 1839, the defendants in error brought a writ of right (a proceeding recognized by the statutes of Iowa, in the nature of an ejectment) against the tenant in possession under Marsh, Lee, and Delavan. After sundry proceedings, which it is not necessary to state, the cause came on for trial at September term, 1843, of the District Court, when the jury, under the instructions of the court, found a verdict for the plaintiffs.

A bill of exceptions was taken, which set out the evidence offered by the parties respectively, as follows, viz.:—

The plaintiffs offered in evidence the above patent; proved that the land claimed was included within it; the heirship of the plaintiffs; and that the defendant was in possession when the suit was brought, and then vested.

The defendants, in order to prove an outstanding title, offered in evidence,—

1. The treaty of 1824.
2. The Act of Congress of June 30, 1834.
3. The Act of Congress of July 1, 1836.

And also offered parol testimony to prove that the northern line of said half-breed reservation was an actually marked line, in accordance with said plat, and called by the neighborhood, along and on each side of said line, the half-breed line; and thereupon prayed the court to instruct the jury as follows, to wit:—

Refused.

1st. That if the jury believe, from the evidence, that the land described in the patent lies within the reservation for the Sac and Fox half-breeds, then the plaintiffs are not entitled to recover under said patent, as authorized by the said act of 1st of July, 1836.

* *Given.* [*226

2d. That under the report of the recorder of land titles, dated February 2d, 1816, offered by plaintiffs in evidence, plaintiffs are not entitled to recover, unless the same has been confirmed by an act of Congress.

Given.

3d. That the true construction of the act of 29th of April, 1816, does not confirm the plaintiffs' title to the land sued for in this action, if the Indian title was not then extinguished in said land.

Given.

4th. That the treaty of 1824, with the Sac and Fox Indians, is a recognition by the United States of the Indian title to the land in controversy at the date of said treaty of 1824.

Refused.

5th. That if the jury believe, from the evidence, that the land described in the patent lies within the reservation for the Sac and Fox half-breeds, then the plaintiffs are not entitled to recover under said patent.

Given.

6th. That if the jury find for the plaintiffs, and that said plaintiffs are entitled to damages from defendants for withholding or using or injuring their property, the jury shall then set off the value of any permanent improvements defendants may have made on said land, at their fair value, against said damages.

Refused.

7th. That the plaintiffs cannot recover in this action, unless they show conclusively that the land in controversy is not within the Sac and Fox half-breed reservation.

Given.

8th. Instruct the jury, that, when it is proved that the land claimed by Reddick's heirs was within the bounds of the map given in evidence in this case, as a survey of the half-breed tract, and that it has proved that such a line does exist, and is recognized by persons residing on each side of the line as the true north line of said tract, that no reputation or opinion of the citizens residing south of said line, or north of said line, that said line is incorrect, would be evidence to impeach the correctness of the line on the map, and proved to actually exist.

Given.

9th. That if the jury believe that Honore Tesson had no marked or known boundaries, which included the land in controversy, the jury must find for the defendant.

*227] The first, fifth, and seventh of which instructions the court *refused to give to the jury; to which refusal and opinion of the court the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record.

CHARLES MASON, *Judge.* [SEAL.]

The defendants sued out a writ of error, and carried the

case up to the Supreme Court of Iowa, which, on the 26th of January, 1846, affirmed the judgment of the District Court.

The defendants in the District Court, viz., Marsh, Lee, and Delavan, then brought the case, by writ of error, up to this court.

It was argued by *Mr. Wood*, for the plaintiffs in error, and *Mr. May* and *Mr. Geyer*, for the defendants.

Mr. Wood made the following points:—

I. The possession of the defendants in the original suit was sufficient to entitle them to a verdict, unless the plaintiffs should show a title.

II. An outstanding valid title, paramount to that of said plaintiffs, was sufficient to protect the possession of defendants below against the plaintiffs' title. *Schauber* v. *Jackson*, 2 Wend., 12.

III. The title of the Indian half-breeds, under the act of 1834 and the treaty of 1824, was valid and complete, and being prior in time to the patent of the plaintiffs of 1839, which issued in virtue of the act of 1836, is paramount thereto, and ought to prevail against it. 1 Doug. (Mich.), 555; *Hoofnagle v. Anderson*, 7 Wheat., 212; 2 Pet., 263; 9 Wheat., 673; 9 Pet., 715, 716.

IV. Even if the plaintiffs below had shown a defective title prior to the treaty of 1824, such defective title would not, as against the said title under the act of 1834, be made valid by the plaintiffs' patent of 1839, because such patent passed only the title of the United States, then existing; more especially, inasmuch as the act of 1836, under which it issued, reserved rights previously acquired under treaty with any Indian tribe. *Lee v. Glover*, 8 Cow. (N. Y.), 189; *Mitchel* v. *United States*, 9 Pet., 748; *Johnson* v. *McIntosh*, 8 Wheat., 578.

The counsel for the defendants in error contended,—

I. The court did not err in refusing the said prayers, because,—

1. They are based on a part only of the evidence. *Greenleaf's Lessee* v. *Birth*, 9 Pet. 292.

*2. It appears on the plot, by the prayers of plaintiffs in error, and on the face of the patent, that the land in dispute had been, by acts of Congress, confirmed to Reddick prior to the treaty of August, 1824. [*228

The patent being founded on a confirmation, the facts recited may be considered. *United States* v. *Clarke*, 8 Pet., 448. A public grant, if admitted in evidence, must be

received by court and jury as evidence both of the facts it recites and declares leading to the foundation of the grant, and all other facts legally inferable by either from what is so apparent on its face. *United States* v. *Arredondo*, 6 Pet., 729. See Act of March 2d, 1805, ch. 26 (2 Stat. at L., 324); Act of April 21st, 1806, ch. 39 (2 Id., 391); Act of February 15th, 1811, ch. 14 (2 Id., 617); Act of June 13th, 1812, ch. 99, (2 Id., 748,) authorizing Recorder to report on claims to land in Missouri; Reports of Recorder of November 1st, 1815, and February 2d, 1816, in favor of Reddick's claim; 3 Am. State Papers, 345; Act confirming Claims reported by Recorder, April 29th, 1816, ch. 159 (3 Stat. at L., 328).

The report of recorder adds to his approval of Reddick's claim "if Indian right extinguished." As to the effect of this proviso, see Report of J. M. Clayton, Chairman 23d Congress, 2d Sess. Report, No. 31, Ho. Reps.; *United States* v. *Fernandez et al.*, 10 Pet., 303; *Chouteau* v. *Eckhart*, 2 How., 374; Report of Solicitor of Land Office, MSS. vol., No. 75, dated June 9, 1837.

Did not the act of April 29th, 1816, include Reddick's claim?

It was approved by the recorder, acting as commissioner, as a valid claim, subject only to Indian rights, on the contingency that they are or may thereafter be extinguished. "All grants of land by the government are to be understood as being subject to Indian rights." *Fletcher* v. *Peck*, 6 Cranch, 87; *Mitchel* v. *United States*, 9 Pet., 711; *Johnson* v. *McIntosh*, 8 Wheat., 574.

If, before the confirmation to Reddick, the title was only inchoate and addressed itself to the political departments of government, (see *Le Bois* v. *Bramell*, 4 How., 449,) yet it was such an equitable title as the government was bound to protect. *Mitchel et al.* v. *United States*, 9 Pet., 714.

But what was the effect of the confirmation by the act of April 29th, 1816, if restricted by the proviso of the recorder, to wit, "if Indian right extinguished." Did it not at least grant the ultimate fee, which was in the United States, sub-
*229] ject to Indian right of possession? Could the United States afterwards *deal with the fee, and reserve or in any way dispose of it? *Mitchel et al.* v. *United States*, 9 Pet., 713; *Grignon* v. *Astor*, 2 How., 344.

Indians have only a right of occupancy, and no power to dispose of the soil. *Johnson* v. *McIntosh*, 8 Wheat., 543. Indians cannot sue on their aboriginal title in courts of the United States. *Cherokee Nation* v. *Georgia*, 5 Pet., 20.

Grants of land by the government are to be understood to convey a title to the grantees, subject only to the Indian right of occupancy. When that is ended by cession to the government, or otherwise, it is to be enjoyed in full dominion by the grantee. Id.; *Fletcher* v. *Peck*, 6 Cranch, 87; *Mitchel* v. *United States*, 9 Pet., 711; *United States* v. *Fernandez*, 10 Pet., 304.

The act confirming Reddick's title was passed in 1816. After this, by the treaty of August, 1824, the Indians cede all their title, reserving only a small tract for the use of their half-breeds, they holding it as "other Indian titles are held." Reddick's land was located before this, and well known to the government by its metes and bounds. See additional article of Treaty with Sac and Fox Indians, dated November 3d, 1804 (7 Stat at L., 87).

Was not the reservation subject, then, to his locations? Otherwise would it not be a fraud on the part of the United States?

The confirmation of the claim of Reddick, either by the recorder or Congress, was a location of the land. *Les Bois* v. *Bramell*, 4 How., 463.

The grant, then, by act of April 29th, 1816, is *primâ facie*, a good legal title, and standing alone will support an ejectment. *Strother* v. *Lucas*, 12 Pet., 454; *Chouteau* v. *Eckhart*, 2 How., 372. It is a higher evidence of title than a patent, and is a direct grant of the fee. *Grignon* v. *Astor*, 2 How., 344.

But the plaintiffs below relied upon their patent, issued 7th February, 1839. It is the superior and conclusive evidence of legal title. *Bagnell* v. *Broderick*, 13 Pet., 436; *Wilcox* v. *Jackson*, Id., 499. It is conclusive proof that the act of granting is by authority of the United States. *United States* v. *Arredondo*, 6 Pet., 728; *Patterson* v. *Winn*, 5 Id., 241. And is evidence that every prerequisite has been performed. *United States* v. *Arredondo*, 6 Pet., 730, 731; *Polk* v. *Wendal*, 9 Cranch, 87.

It will not be presumed that the government has conveyed the same land twice. *United States* v. *Arredondo*, 6 Pet., 691.

The court will not construe the patent as conflicting with other rights. *Ib.*

*The patent is *primâ facie* evidence of title, and also that any former grant of the same land by the government was extinguished. *Hall* v. *Gittings's Lessee*, 2 Harr. & J. (Md.), 112. [*230

This court has repeatedly decided that at law no facts behind the patent can be investigated. *Boardman et al.* v. *Lessees of Reed and Ford*, 6 Pet., 328, 342; *Stringer* v. *Young*, 3 Id., 320.

But it ought to be presumed, in cases of disputes about lands granted by government on Indian titles, that a patent carefully describing the lands does not interfere with other public grants, or specially with Indian reservations.

Intercourse with the Indians should be carried on by the government. *Worcester* v. *State of Georgia*, 6 Pet., 315.

It is for the officers of government to say when land shall be reserved, and what is so reserved. Indian affairs belong to the political department. The United States deal with Indian titles in their political and sovereign capacity. It is for the land officers to decide on facts on which a patent is to issue. *Cherokee Nation* v. *Georgia*, 5 Pet., 1; *Wilcox* v. *Jackson*, 13 Id., 499; *Les Bois* v. *Bramell*, 4 How., 461.

Though grants are subject to Indian title, yet it is for the proper officers of government to say when such title is extinct by succession, or abandonment, by boundary, or rejection of claim, and the lands have reverted to public fund. *United States* v. *Arredondo*, 6 Pet., 747, 748.

The officers of government have determined that the Indian right was extinguished to Reddick's claim, if the act of April 29, 1816, had not already so determined; and, by issuing the patent, have at least put the burden of proving the contrary on those who dispute it. *United States* v. *Arredondo*, 6 Pet., 727, 728; *Strother* v. *Lucas*, 12 Id., 437; 3 State papers; Report of Solicitor of the Land Office, MSS. vol., No. 113, dated September 21, 1837; also No. 209, dated October 30, 1838; Opinion of Attorney-General Grundy, dated January 2, 1839, Vol. of "Opinions of Attorneys-General," p. 1230; Order of Secretary Woodbury, dated February 6, 1839, to issue patent to Reddick's heirs, "by command of the President without any further suspension," and order of Commissioner of Land Office in pursuance thereof (on the files of Land Office).

Presumptions are in favor of the integrity and fidelity of public officers in fulfilling their duties. *Bank of the United States* v. *Dandridge*, 12 Wheat., 64; *Martin* v. *Mott*, Id., 19; Bull. N. P., 298; 1 Green. on Ev., § 40.

If the patent is *primâ facie* evidence, and is not rebutted, it remains sufficient to maintain the title. *Kelly* v. *Jackson*, 6 Pet., 632.

*231] *II. The outstanding title set up by the plaintiffs in error in the court below, under the treaty and law of June 30, 1834, does not necessarily negative a title in the United States at the date of the patent.

It must be a clear subsisting title outstanding in another, to defeat a plaintiff in ejectment, and that means such a title

as the stranger could recover on in ejectment against either of the contending parties. *Hall* v. *Gittings's Lessee*, 2 Harr. & J. (Md.), 112.

III. The act of June, 1834, does not necessarily include in the half-breed reservations the land in dispute.

IV. The burden of showing that there was no title in the United States at the date of the patent, and also that the land is within the half-breed reservation, was upon the plaintiffs in error (defendants below). *Greenleaf* v. *Birth*, 6 Pet., 302; *Hawkins* v. *Barney*, 5 Id., 468, 469.

Mr. Justice CATRON delivered the opinion of the court.

This case comes before us on a writ of error to the Supreme Court of Iowa. The suit originated in a writ of right issued by the District Court of Lee County, at the instance of the heirs of T. F. Reddick, to recover possession of certain lands wrongfully withheld from them, as they alleged, by the defendants, Marsh and others. The venue was subsequently changed to the county of Henry, where the cause was tried in September, 1843. The plaintiffs claimed possession, as owners, under a patent to their ancestor, signed by the President and issued from the General Land Office on the 7th of February, 1839, which they exhibited, and also proved the premises in question to be covered by such patent, and in possession of defendants.

The defendants produced in evidence,—1st. An act passed by Congress on the 1st of July, 1836, relinquishing to the heirs of T. F. Reddick the right and interest of the United States in six hundred and forty acres, being the land in controversy; which act contained the following provisos:—"Provided, nevertheless, if said lands shall be taken by any older or better claim, emanating from the United States, the government will not be in any wise responsible for any remuneration to said heirs; and provided, also, that should said tract of land be included in any reservation heretofore made under treaty with any Indian tribe, the said heirs be, and they hereby are, authorized to locate the same quantity, in legal subdivisions, on any unappropriated lands in said territory subject to entry at private sale." 2d. The treaty of August 4, 1824, between the United States and the Sac and Fox Indians, and a plat showing the *premises in question to be within the limits of a tract reserved by said treaty for the half-breeds belonging to the Sac and Fox nations. 3d. The act of June 30, 1834, relinquishing the reversionary or contingent interest of the United States in the reservation above mentioned to the half-breeds, and authorizing them to

[*232

sell and convey the same. The defendants then requested the court to give to the jury several instructions; the first, fifth, and seventh of which were as follows:—

"1st. That if the jury believe from the evidence, that the land described in the patent lies within the reservation for the Sac and Fox half-breeds, then the plaintiffs are not entitled to recover under said patent, as authorized by the act of 1st June, 1836."

The fifth is to the same effect as the first.

"7th. That the plaintiffs cannot recover in this action, unless they show conclusively that the land in controversy is not within the Sac and Fox half-breed reservation."

The court refused to charge the jury upon the above-mentioned points as requested, and a verdict was rendered for the plaintiffs; whereupon the case was carried by the defendants to the Supreme Court of Iowa, where the judgment of the District Court was affirmed.

From the foregoing statement it appears that, by refusing to give the first, fifth, and seventh instructions, the court below decided that the patent obtained from the United States by Reddick's heirs was a better title than the reservation to the Sac and Fox half-breeds.

The patent of 1839, was, *primâ facie*, a conclusive title; but by the treaty of 1824, with the Sac and Fox Indians, the land in dispute was admitted by the United States to lie within the territory ceded by the treaty; and the Indian title, such as it was before the treaty, is reserved to the half-breeds. This Indian title consisted of the usufruct and right of occupancy and enjoyment; and, so long as it continued, was superior to and excluded those claiming the reserved lands by patents made subsequent to the ratification of the treaty; they could not disturb the occupants under the Indian title. That an action of ejectment could be maintained on an Indian right to occupancy and use, is not open to question. This is the result of the decision in *Johnson* v. *McIntosh*, 8 Wheat., 574, and was the question directly decided, in the case of *Cornet* v. *Winton*, 2 Yerg. (Tenn.), 143, on the effect of reserves to individual Indians of a mile square each, secured to heads of families by the Cherokee treaties of 1817 and 1819. Here, however, in addition to the reserved Indian right, the act of 1834 vests the ultimate *title remaining to the United States in the half-breeds of the Sac and Fox tribes; thereby giving them a perfect fee-simple. And this act of 1834, being older than the patent, must prevail, unless the plaintiffs below can go behind their patent; and on this assumption the controversy has been made to turn. No evi-

*233]

dence of title was introduced in the District Court other than the patent itself; and its recitals are relied on to overreach the half-breed title. In the argument here, reports found in Congressional documents, and laws passed by Congress operating on such reports and document, have been adduced and insisted on as confirming Reddick's claim, long before the treaty of 1824 was made. The patent recites that Reddick (assignee of Robidoux, who was assignee of Tesson) had deposited in the General Land Office a certificate (No. 1157) of the recorder of land titles at St. Louis, Missouri; and that, in pursuance of the several acts of Congress for the adjustment of titles and claims to land, said Reddick has been confirmed in his claim to a tract of land containing six hundred and forty acres, &c.

For the purpose of showing the consideration on which the patent is founded, and the authority by which it issued, the recitals are indisputable on a trial at law; but standing alone, they do not furnish sufficient evidence to establish that the title can take an earlier date than the patent, and thereby overreach an elder title, as that of the half-breeds. As another trial will probably bring out a different case from the one now presented to us, we refrain from making any further remarks on the extraneous matters adduced on the argument.

Nor can the act of 1836, in favor of Reddick's heirs, help the patent, it being of later date than the treaty; and the confirming act to the half-breeds is, of course, (when standing alone,) inferior to the Indian title.

It was also insisted on the argument here, that, as it did not appear that any half-breeds, or their heirs or assigns, were in existence when the trial below took place, the outstanding title relied on could not be set up by the defendants. To which it may be answered, that it was necessary for the plaintiffs to show themselves to be owners of the land, and to recover on the strength of their own title; and if the land had been previously granted, nothing was left to pass by the second patent, unless there had been an escheat, or forfeiture of title to the United States, by the first grantees; and certainly a court of justice could presume neither of these things to have taken place between 1834 and 1839, such being the respective dates of the confirming act to the half-breeds, and the patent of Reddick's heirs. The general rule is, [*234
that, where the same land has been *twice granted,
the elder patent may be set up in defence by a trespasser, when sued by a claimant under the younger grant, without inquiring as to who is the actual owner of the land at the time of the trial.

It is therefore ordered, that the judgment be reversed, and the cause remanded for another trial to be had therein.

Order.

This cause came on to be heard on the transcript of the record from the Supreme Court of the territory of Iowa, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court; that the judgment of the said Supreme Court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded for further proceedings to be had therein in conformity to the opinion of this court.

MOSES WANZER, PLAINTIFF IN ERROR, *v.* TULLIUS C. TUPPER AND JOHN H. ROLLINS, UNDER THE FIRM OF TUPPER & ROLLINS.

By the statutes of Mississippi, the holder of an inland bill of exchange is entitled to recover of an indorser the amount due on the bill, with interest, upon giving the customary proof of default and notice. A protest is necessary only for the purpose of enabling him to recover the five per cent. damages given by the act.
The case of *Bailey* v. *Dozier* (6 How., 23) confirmed.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the Southern District of Mississippi.

It was an action brought by Wanzer upon a bill of exchange drawn by him upon Silverbury & Co., accepted by drawees, and indorsed by Tupper & Rollins to Wanzer.

The cause was tried in the Circuit Court in November, 1846, when the court refused to permit the bill, although admitted to be an inland bill of exchange, to be given in evidence to the jury, because there was no valid protest thereof.

It is unnecessary to state any further facts in the case.

It was argued in this court by *Mr. Coxe*, for the plaintiff in error, no counsel appearing for the defendants.

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

*235] In this case, the Circuit Court for the Southern District of *Mississippi decided, that the holder of an