say, they are not the proper persons against whom the suit ought to have been brought.

In *reply*, it was said, that the policy is in the usual form: a form which is generally used, whether the policy be under seal or not: and therefore, no argument can be drawn from the peculiar expressions of the instrument. The declaration states it to be under the common seal, which is a technical name for the seal of a corporation. The act which creates this company has no negative words, by which they are forbidden to make policies under seal, if they think proper. The clause which authorizes them to make a policy, by the signature of the president, without the common seal, was introduced for their benefit, so as to enable them to defend actions, without the necessity of that special pleading which often attends actions of covenant. The general maxim of law is, that every one may waive a provision introduced for his benefit. The act of incorporation says, that when any action shall be prosecuted upon such policy, the same shall be brought against the president who subscribed the same, or his successor in office, and all recoveries in such actions shall be conclusive on the company. Not only the *capias* must be against the president, but the declaration and judgment. How the judgment is to be satisfied, is not for us now to determine, nor is it important. The mode of recovery prescribed by the law must be pursued.

March 1st, 1803. THE COURT reversed the judgment, and ordered it to be arrested, because the action is a special action upon the case on the policy, and the declaration shows that the policy is a specialty.

The court seemed to be of opinion, that an action of covenant would lie upon it against the company, in their corporate name.

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*343] *ABERCROMBIE *v.* DUPUIS and another.

Averment of citizenship.

To give jurisdiction to the courts of the United States, the pleadings must expressly state the parties to be citizens of different states, or that one of them is an alien; it is not sufficient, to say that they reside in different states.

ERROR to a judgment of the Circuit Court for the district of Georgia. The plaintiffs below (or petitioners, as they are called in the record) "aver, that they do severally reside without the limits of the district of Georgia aforesaid, to wit, in the state of Kentucky, therefore, they have the right to commence their said action in this honorable court," &c.(*a*) The defendant is called Charles Abercrombie, of the district of Georgia, Esq.

It was assigned for error, that the circuit court had not jurisdiction of the cause, because it does not appear upon the record, that either of the parties is an alien, nor that the parties are citizens of different states. And for this error, the judgment was reversed, without argument.

THE COURT said, that the question had been decided, after full argument, in the case of *Bingham* v. *Cabot*, 3 Dall. 382, and they did not think proper to overrule that case.

(*a*) This averment followed immediately after the *ad damnum*, at the foot of the declaration.

The CHIEF JUSTICE said, he did not know how his opinion might be, if the question were a new one.

LINDO *v.* GARDNER.

Action of debt on promissory note.

Debt will not lie, in Maryland, upon a promissory note.
Quære? Whether the statute of limitations can be given in evidence, on *nil debet?*[1]

THIS was an action of debt brought by the administrators of Archibald Gardner against Abraham Lindo, upon a promissory note, in the Circuit Court of the district of Columbia, sitting in Washington. The act of congress respecting the district of Columbia had adopted the laws of Maryland as the law of this part of the district. In Maryland, the statute of 3 & 4 Anne, c. 9, respecting promissory notes, had been "introduced, used and practised by the courts of law," and thereby, and *by virtue of the declaration of rights, section 3d, it became the law of the land; and [*344 the courts of Maryland, in their construction of that statute, had always respected the adjudications of the English courts. In the court below, there was a verdict and judgment for the plaintiffs; to reverse which judgment, the defendant sued out the present writ of error.

The declaration was, "of a plea that he render to them $336.97, money of account of the United States of America, for that the defendant, on the 5th of October 1795, at, &c., by his certain note in writing, of that date, subscribed with his proper manuscription, and now here shown to the court, acknowledged himself to owe to Archibald Gardner the said sum of $336.97, which the said defendant promised to pay the said Gardner, and to the order of the said Gardner, at sixty days after the date of the said note in writing, it being in consideration of value received." It then averred the non-payment, &c., and made a *profert* of the letters of administration, which were averred to be "in due form."

The defendant in the court below pleaded *nil debet*; and after verdict against him, moved in arrest of judgment, because, 1. An action of debt cannot be maintained upon the promissory note set forth in the declaration. 2. It does not appear that the plaintiffs had obtained such letters of administration, as to entitle them to maintain an action upon the said note. 3. The declaration is in the *debet* and *detinet*, and ought to be in the *detinet* only.(*a*)

There was also a bill of exceptions stating the refusal of the court to suffer the defendant to give the statute of limitations in evidence on the plea of *nil debet*. The note was in these words:

(*a*) The *capias*, which, in Maryland, is considered as part of the record, was in the *detinet* only. The declaration was in neither the *debet* nor *detinet*, having omitted those words altogether.

[1] Every statute of limitation must be specially pleaded, unless it be otherwise provided. Heath *v.* Page, 48 Penn. St. 130.