executed, and it has been contended that Kennedy paid the full value for it, being altogether over $4,000. After such a length of time, it may be expected that the estimates of witnesses from recollection will differ widely. But when we look at the public assessments, and the sales of contiguous property about the *same time, which are the best tests, it would seem that the boast of Joshua Kennedy himself, that [*187 "he had bought for $4,000 property worth $40,000," was not an exaggeration of the truth. But assuming the true value to have been one half that sum, and taking into consideration the facts and circumstances already stated, we think the Circuit Court was fully justified in setting aside these conveyances, and decreeing that the defendants should account.

7. The absence of the complainant from the state, and the late discovery of the fraud, fully account for the delay and apparent laches in prosecuting his claim, which have been objected to, on the argument.

The decree of the court below is therefore affirmed, but with this addition: "that the master, in taking the account of rents, profits, sales, &c., shall allow to the defendants the sum paid to James Inerarity for his claim against the estate of Joseph Collins."

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 Alabama, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed, with costs, and with this addition: "that the master, in taking the account of rents, profits, sales, &c., shall allow to the defendants the sum paid to James Inerarity for his claim against the estate of Joseph Collins;" and that this cause be, and the same is hereby, remanded to the said Circuit Court, to be proceeded with in conformity to the opinion of this court.

SHERBURNE SEARS, PLAINTIFF IN ERROR, *v.* JOSEPH R. EASTBURN.

The act of Congress passed in May, 1828, (4 Stat. at L., 278), directs that the forms and modes of proceeding in the courts of the United States, in suits at common law in the states admitted into the Union since 1789, shall be the same with those of the highest court of original jurisdiction in the state.

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Therefore, where the state of Alabama passed an act to abolish fictitious proceedings in ejectments, and to substitute in their place the action of trespass for the purpose of trying the title to lands and recovering their possession, the Circuit Court of the United States should have conformed, in its mode of proceeding, to the law of the state.[1]

And the judgment of the Circuit Court, dismissing an action of trespass so brought, upon the ground that the law of the state was not in force in the Circuit Court, was erroneous.

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[1] See Rev. Stat., §§ 914, 915, 916. The practice of the state courts is not controlling unless adopted by act of Congress or rule of court. *Wilcox* v. *Hunt*, 13 Pet., 378; *Long* v. *Palmer*, 16 Id., 65; *The Delaware*, Olc., 240; *Bayard* v. *Mandeville*, 4 Wash. C. C., 445; *The Mayor* v. *Lord*, 9 Wall., 409. But the state practice *may*, by an established usage, be adopted by the federal courts, if they see fit, without any statute or rule of court. *Fullerton* v. *Bank of United States*, 1 Pet., 604; *Hiriart* v. *Ballou*, 9 Id., 156.

The state practice cannot be permitted to interfere with the distinction preserved in the federal courts between law and equity, either in substance or procedure. *Bills* v. *New Orleans, &c., R. R. Co.*, 13 Blatchf., 227; *Butler* v. *Young*, 1 Flipp., 276; *Nickerson* v. *Atchison, &c., R. R. Co.*, 1 McCrary, 383; *Parsons* v. *Denis*, 2 Id., 359.

Rev. Stat., § 914, applies to suits prosecuted in behalf of the United States, *United States* v. *Fetlow*, 2 Low., 159.

State statutes authorizing examination of parties before trial, or inspection of books and papers, do not apply to suits in the Federal Courts; but such course as is indicated by the Federal legislation on those subjects must be followed. *Easton* v. *Hodges*, 7 Biss., 324.

The codes of procedure of the states, as regulations of pleadings in the Circuit and District Courts of the United States, within such states, are adopted. Thus the common law forms of pleading are no longer necessary in the United States courts within the state of New York; nor are they admissible, except as they may be deemed to be substantially a compliance with the requirements of the Code of Procedure of the state, as to pleadings. Hence a pleading in a suit at law in the United States Circuit Court, which is not authorized in a like suit in a court of the state, will be set aside on motion. *Lewis* v. *Gould*, 13 Blatchf., 216.

Judgment may be entered on a referee's report without an application to the court, where such is the practice in the state courts. *Fourth Nat. Bank of Chicago* v. *Neyhardt*, 13 Blatchf., 393.

The rules of practice under N. Y. Code or Pro., have no application to writs of error and bills of exceptions in the United States Courts. *Whalen* v. *Sheridan*, 18 Blatchf., 308, 324.

In common law actions in the Federal courts, depositions may be taken pursuant to the state law or the act of Congress, as parties may elect. *Flint* v. *Crawford County Comm'rs*, 5 Dill., 481.

Where the statute of a state allows a defendant in an ejectment suit a new trial upon the payment of costs, this statute is binding upon the United States Circuit Court in an action of ejectment. *Hiller* v. *Shattuck*, 1 Flipp., 272.

In Pennsylvania it is not usual to make a record of the judgment in any legal form. But there is no necessity that the courts of the United States should follow such careless precedents. *Piquignot* v. *Pennsylvania R. R. Co.*, 16 How., 104.

The agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a state, regulating the proceedings of its own courts, authorize a district or circuit court sitting in the state, to depart from the modes of proceeding and rules prescribed by the acts of Congress. *Kelsey* v. *Forsyth*, 21 How., 88.

Only those rules of practice which are merely such are adopted, and not those enactments of state legislation relating to practice in the courts which deprive them of power to control the application of rules of practice according to their discretion. *Mutual Building Fund* v. *Bossieux*, 1 Hughes, 386.

The employment, by United States courts of state or municipal agencies

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

In August, 1845, Sherburne Sears brought an action of *trespass quare clausum fregit*, in the Circuit Court of the United States for the Southern District of Alabama. The short note, expressive of the cause of action, filed at the time of issuing the writ, declared it to be "as well to try titles as to recover damages," &c., and the declaration described a particular lot in the city of Mobile, where the trespass was alleged to have been committed.

In April, 1846, the counsel for the defendant moved the court to dismiss the suit, because the statute of Alabama entitled "An Act to abolish fictitious proceedings in eject-

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to enforce judgments or decrees of such courts, must be in conformity with state laws, and such courts cannot, by *mandamus*, compel state officers to do what they have no legal right to do. *United States* v. *Knox County Court*, 1 McCrary, 608.

Where, by the local law, a foreign corporation is amenable to suit in the state courts, service being made upon an agent within the state, the Federal Courts may be regarded as courts of the state, and may take jurisdiction upon such service as would be good in a state court. *Eaton* v. *St. Louis, &c., Mining Co.*, 2 McCrary, 362.

A motion for a new trial is not a mere matter of proceeding or practice in the district and circuit courts. It is, therefore, not within the act of June 1, 1872, and cannot be affected by any state law upon the subject. *Indianapolis, &c., R. R. Co.* v. *Horst*, 3 Otto, 291.

The United States courts cannot, by *mandamus*, compel the collection of a tax to pay certain bonds until judgment has been obtained, although the statute authorizing the bonds provided for such a remedy in the state courts, as in the former courts the writ is only granted in aid of an existing jurisdiction. *Davenport* v. *Dodge County*, 5 Otto, 237.

Where lands have been mortgaged and parcels thereof subsequently sold at different times to different purchasers, the order in which such parcels shall be subjected to the satisfaction of the mortgage is, where the rule is established by the statutes or by the decisions of the courts of the state where the lands lie, a rule of property binding on the courts of the United States sitting in that state. *Orvis* v. *Powell*, 8 Otto, 176.

Where, touching the competency of witnesses, there is a conflict between the law of the state and an act of Congress, the latter must govern the courts of the United States. *King* v. *Worthington*, 14 Otto, 44.

A party in whose favor a judgment is rendered in a common law cause, by a court of the United States sitting in the state of New York, is, in order to reach the property of the judgment debtor, entitled to the remedy provided by the statute of that state, and known as proceedings supplementary to execution. *Ex parte Boyd*, 15 Otto, 647. But compare *Frazer* v. *Colorado Dressing, &c., Co.*, 2 McCrary, 11.

The act of the Louisiana legislature abolishing the writ of *fi. fa.* for the enforcement of judgments against the city of New Orleans is not obligatory upon the United States Courts. *New Orleans* v. *Morris*, 3 Woods, 115.

Statutes of the several states regulating remedies by means of judicial proceedings, are to be understood as intended to apply only to proceedings in the courts of the particular state where adopted, unless it clearly appears that they were intended to have a wider scope. *Majors* v. *Cowell*, 51 Cal., 478.

Damages should be assessed, in a United States Court, by a jury or otherwise, according to the practice of the state courts. *Raymond* v. *Danbury, &c., R. R. Co.*, 43 Conn., 596.

ment, and for other purposes therein mentioned," approved December 17, 1821, under which the suit was brought, did not extend to the Circuit Court; and the court, being of that opinion, dismissed the suit.

The plaintiff sued out a writ of error, and brought the case up to this court.

It was argued by *Mr. Sewall*, for the plaintiff in error.

The plaintiff contends that the action of trespass in this case was maintainable in the Circuit Court of the United States in Alabama, and was therefore improperly dismissed.

1st. By an act of Alabama, approved December 17, 1821, the action of trespass was substituted for that of ejectment (Clay's Dig., p. 320, §§ 43, 44, 45), and has ever since remained a remedy for trying the title to, and recovering possession of, lands. It was in force at the time of the passage of the act of Congress of the 19th May, 1828 (4 Stat. at L., 278), and was therefore adopted by that act as a part of the "forms and modes of proceeding in suits" in the Circuit Court of the United States for the Southern District of Alabama. *Beers* v. *Haughton*, 9 Pet., 357; *Strachen* v. *Clyburn*, 3 McLean, 174. It is a remedy in constant use in Alabama, and has been before this court in *City of Mobile* v. *Eslava*, 16 Pet., 235; *Same* v. *Hallett*, Id., 261. The declaration may be in the usual form of *trespass quare clausum fregit*. *Carwile* v. *House*, 6 Ala., 710.

In *Hagan* v. *Lucas*, 10 Pet., 400, the Circuit Court of the United States at Mobile entertained a suit for the trial of the right of property under an act of Alabama of the 24th December, 1812, and its judgment was affirmed by this court.

2d. By the eleventh section of the Judiciary Act of 24th September, 1789 (1 Stat. at L., 78), "The Circuit Courts *189] *have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law and in equity," &c. Common law in this act must be taken in contradistinction to equity; and may well embrace the action of "trespass," applied by a state statute as a remedy for trying the title to land.

3d. It is a remedy in respect to real estate, and the general rule is, that such remedies are to be pursued according to the law of the place where the estate is situated. *Robinson* v. *Campbell*, 3 Wheat., 212, 219.

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

The point in this case is a narrow one, and concerns only

the practice in the Circuit Court of the United States for the Southern District of Alabama.

It appears that in 1821 an act was passed by the legislature of that state to abolish fictitious proceedings in ejectment; and to substitute in their place the action of trespass, for the purpose of trying the title to lands and recovering the possession.

In the case before us, an action of trespass was brought by the plaintiff in error against the defendant, for the purpose of recovering a certain parcel of land to which he claimed title. The writ was indorsed in the manner required by the statute of Alabama; and the declaration was in the usual form of an action of trespass. There does not appear to have been either plea or demurrer put in by the defendant, nor any issue of fact or law joined between the parties. But the defendant by his counsel moved the court to dismiss the suit, upon the ground that the law of the state was not in force in the Circuit Court of the United States; and the district judge then holding the Circuit Court, being of that opinion, dismissed the suit, and gave judgment in favor of the defendant for his costs.

This decision is evidently erroneous. The act of May, 1828, (4 Stat. at L., 278), in express terms, directs that the forms and modes of proceeding in the courts of the United States, in suits at common law in the states admitted into the Union since 1789, shall be the same with those of the highest court of original jurisdiction in the state. Alabama is one of the states admitted since 1789; and the act of Congress, therefore, makes it obligatory upon the courts of the United States to conform in their mode of proceeding to the law of the state. The law of the state of itself, undoubtedly, was not obligatory upon the courts of the United States. But it is made so by the act of Congress.

The judgment of the Circuit Court must therefore be reversed, with costs.

* *Order.* [*190

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 Alabama, 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 for further proceedings to be had therein, in conformity to the opinion of this court, and as to law and justice shall appertain.