notes of said surveyors), duly authenticated under the seal of this court.

*And it is further ordered, that a similar copy in all respects be by said clerk forwarded to his Excellency, the Governor of the state of Missouri. [*54

And it is further ordered, that the clerk forward a copy to each of said commissioners, Hendershott and Minor, of the order referring the matter of costs and charges, the clerk's report thereon, and so much of the foregoing decree as respects the costs and charges, for the guidance of said commissioners in the performance of their duties in this respect.

Henry Webster, Plaintiff v. Peter Cooper.

Where it appears that the whole case has been certified *pro forma*, in order to take the opinion of this court, without any actual division of opinion in the Circuit Court, the practice is irregular, and the case must be remanded to the Circuit Court to be proceeded in according to law.[1]

The decision of this court in the case of *Nesmith and others* v. *Sheldon*, (6 How., 41,) affirmed.[2]

This case came up on a certificate of division of opinion, *pro forma*, between the judges of the Circuit Court of the United States for the District of Maine.

It was a real action, in which the plaintiff demanded a certain parcel of land situated in Pittston, in the county of Kennebec and state of Maine, and claimed title under the will of one Florentius Vassal, made in England in 1777.

Most of the points of division certified arose upon the construction of this will, and the remainder were upon the right of the plaintiff to maintain the action, and the rule of estimation as to improvements; covering in fact the whole case.

The cause was argued by *Mr. Dexter* and *Mr. E. H. Daveis*, for the plaintiff, and *Mr. Allen*, for the defendant; but as no decision was had upon the merits, the arguments of counsel are omitted.

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

This case has been argued at the bar upon points certified as upon a division of opinion in the Circuit Court. But it appears by the record that the whole case has been divided

[1] Followed. *Dennistoun* v. *Stewart*, 18 How., 569. Relied on *in dissenting opinion, Steamer Oregon* v. *Rocca*, 18 How., 576.

[2] See note to *Nesmith* v. *Sheldon*.

into points and sent up to this court,—and several of the latter points could not have arisen on the trial until the previous ones were first decided. We understand it was a *pro forma* division, certified at the request of the counsel for the respective parties.

*55] *This court has frequently said that this practice is irregular, and would, if sanctioned, convert this court into one of original jurisdiction, in questions of law, instead of being, as the Constitution intended it to be, an appellate court to revise the decisions of inferior tribunals. Indeed, it would impose upon it the duty of deciding in the first instance, not only the questions of law which properly belonged to the case, but also questions merely hypothetical and speculative, and which might or might not arise, as previous questions were ruled the one way or the other.

The irregularity and evil tendency of this practice has upon several occasions attracted the attention of the court, although it has been occasionally acquiesced in, and the points so certified acted upon and decided. But at December term, 1847, the subject was very fully considered, and it was then determined that this practice ought not to be sanctioned, and that this court would in all cases refuse to take jurisdiction, when it was obvious that the whole case had been certified *pro forma*, in order to take the opinion of this court, without any actual division of opinion in the Circuit Court. The result of this determination will be found in the case of *Nesmith and others* v. *Sheldon and others*, 6 How., 41. The case before us cannot be distinguished from the one referred to. It is true that it was certified before that decision was pronounced. But the opinion in that case conformed to all the opinions previously expressed by this court upon the irregularity of this practice.

This case, therefore, must be remanded to the Circuit Court, to be proceeded in according to law.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Maine, and on the points and questions 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. And it appearing to this court, upon an inspection of the said transcript, that no point in the case within the meaning of the act of Congress has been certified to this court, it is thereupon now here ordered and

adjudged by this court, that this cause be, and the same is hereby, dismissed, and that this cause be, and the same is hereby, remanded to the said Circuit Court, to be proceeded in according to law.

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*ISAAC SHELBY, COMPLAINANT, *v.* JOHN BACON, ALEXANDER SYMINGTON, THOMAS ROBINS, JAMES ROBERTSON, RICHARD H. BAYARD, JAMES S. NEWBOLD, HERMAN COPE, THOMAS S. TAYLOR, AND GEORGE BEACH. [*56

By a statute of Pennsylvania, passed in 1836, "assignees for the benefit of creditors and other trustees" were directed to record the assignment, file an inventory of the property conveyed, which should be sworn to, have it appraised, and give bond for the faithful performance of the trust, all of which proceedings were to be had in one of the state courts.

That court was vested with the power of citing the assignees before it, at the instance of a creditor who alleged that the trust was not faithfully executed.

The assignees of the Bank of the United States chartered by Pennsylvania, recorded the assignment as directed, and filed accounts of their receipts and disbursements in the prescribed court, which were sanctioned by that court.

A citizen of the state of Kentucky afterwards filed a bill in the Circuit Court of the United States for the Eastern District of Pennsylvania, against these assignees, who pleaded to the jurisdiction of the court.[1]

The principle is well settled, that where two or more tribunals have a concurrent jurisdiction over the same subject-matter and the parties, a suit commenced in any one of them may be pleaded in abatement to an action for the same cause in any other.[2]

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[1] REVIEWED. *Andrews* v. *Smith*, 19 Blatchf., 109.

[2] CRITICISED. *Loring* v. *Marsh*, 2 Cliff., 323. FOLLOWED. *Riggs* v. *Johnson County*, 6 Wall., 205. CITED. *Union Mut. Life Ins. Co.* v. *Chicago University*, 10 Biss., 197 *n*; *Chapman* v. *Borer*, 1 McCrary, 50.

The pendency of another suit for the same cause of action in the same state is pleadable in abatement. *Piquignot* v. *Pennsylvania R. R. Co.*, 16 How., 104; *Earl* v. *Raymond*, 4 McLean, 233; *Bond* v. *White*, 24 Kan., 45; and so is a suit pending in the courts of another state. *Ex parte Balch*, 3 McLean, 221; *Hacker* v. *Stevens*, 4 Id., 535; *Contra*, *Hadden* v. *St Louis, &c. R. R. Co.*, 57 How. (N. Y.), Pr., 390; but not if the other action was commenced since the last continuance. *Renner* v. *Maishall*, 1 Wheat., 215; nor if the suit in which the plea is interposed be a suit *in personam* in a Circuit Court. *White* v. *Whitman*, 1 Curt., 494; *Whitaker* v. *Bramson*, 2 Paine, 209; and a suit pending in a foreign country is not so pleadable. *Lyman* v. *Brown*, 2 Curt., 559.

Where a suit is pending in a foreign jurisdiction, between the same parties and upon the same cause of action as one instituted in our own courts, either of two courses may be taken by the latter, viz., (1) the continuing of the foreign action may be enjoined, or (2) proceedings in the home action may be stayed. In the leading English case of *The Carron Iron Co.* v. *Maclaren*, 5 H. L. Cas., 416, Lord Cranworth, Ch., said: "There is no doubt as to the power of the Court of Chancery to restrain persons within its jurisdiction from instituting or prosecuting suits in foreign courts, whenever the circumstances of the case make such an interposition necessary or expedient. The court acts *in personam*, and will not suffer any one