Upon this view of the subject, it would be useless to grant a rule to show cause; for if the Territorial court made a return stating what they had done, in the precise form in which the sentence of dismissal now appears in the papers exhibited by the relator, a peremptory mandamus could not issue to restore him to the office he has lost.

The motion must therefore be overruled.

WILLIAM A. SHAFFER, PLAINTIFF IN ERROR, *v.* JAMES A. SCUDDAY.

IN 1841, Congress granted to the State of Louisiana 500,000 acres of land, for the purposes of internal improvement, and in 1849 granted also the whole of the swamp and overflowed lands which may be found unfit for cultivating.

In both cases, patents were to be issued to individuals under State authority.

In a case of conflict between two claimants, under patents granted by the State of Louisiana, this court has no jurisdiction, under the 25th section of the judiciary act, to review the judgment of the Supreme Court of Louisiana, given in favor of one of the claimants.

THIS case was brought up from the Supreme Court of Louisiana by a writ of error issued under the 25th section of the judiciary act.

The case is fully stated in the opinion of the court.

It was argued by *Mr. Benjamin* for the plaintiff in error, and *Mr. Taylor* for the defendant.

Upon the question of jurisdiction, *Mr. Benjamin's* point was as follows:

The Supreme Court of Louisiana decided, by a decree reversing the judgment of the District Court, that the Secretary of the Interior *had no authority to make the decision revoking Scudday's location*, and held his title superior to Shaffer's, who claimed under an entry made on the authority of the Secretary's decision.

The case is therefore before the court under that clause of the 25th section of the judiciary act which empowers it to take appellate jurisdiction from the highest State courts, where "is drawn in question the validity of an authority exercised under the United States, and the decision is *against* the validity," and is fully within the principles decided in Chouteau *v.* Eckhart, 2 Howard, 344.

The sole question in the cause, then, is, whether the Secretary had authority to decide, and did rightly decide, that Scudday's location was null, and must be revoked.

This is hardly an open question in this court.

The 8th section of the act of 1841, under which Scudday claims, directs the locations to be made on "any public land,

except such as is or may be reserved from sale by any law of Congress."

This court has decided in the cases above cited, and particularly in that in 15 Howard, that the act of 1841 vested no present title in the State of Louisiana, but was a mere authority to enter lands in the same manner as individuals could enter them; and that the entry under a location made by virtue of a State warrant, and backed by a State patent, did not confer the fee in the land, which is only divested by a patent issued by the United States.

Now, although the Secretary of the Interior approved the location, he did so under the mistaken supposition that the land was "public land," whereas, in point of fact, Congress had already conveyed title to it by the grant in the swamp-land law of 1849.

Before any patent was issued by the United States, therefore, Scudday's entry was revoked under the authority which has been universally conceded to exist in the offices of the Land Office, since the decision of this court, made thirty years ago, and never subsequently called in question. Chotard *v.* Pope, 12 Wheaton, 587.

The case may be summed up in few words, as follows:

1st. Shaffer claims title under a grant made by statute of the United States, vesting the fee in him as fully as a patent would, if issued directly to him. Strother *v.* Lucas, 12 Peters, 454; Chouteau *v.* Eckhart, 2 Howard, 344.

2d. Scudday claims under an inchoate title from the United States, not only still incomplete, but which it is impossible ever to render complete, and his title has been erroneously preferred by the Supreme Court of Louisiana, only because he holds a patent from the State.

But no State authority can confer a right in land sufficient to eject a patentee under the United States. Bagnell *v.* Broderich, 13 Peters, 436.

Mr. Taylor objected to the jurisdiction of this court, upon the following ground:

1. By reference to the decision of the Supreme Court of Louisiana, it will be seen that the question raised as to the construction of the act of 1849 was not decided by the court. The court expressly said that they did "not consider it necessary to decide that question." "The construction of the act of 1849, by the Secretary of the Interior, may be strictly correct, and yet it does not follow that the location of a warrant, under the internal-improvement law of 1841, which had been approved by the proper department of the Government, and for which

a patent had been subsequently issued by the State, could be revoked, so as to destroy the title conferred by the patent. The question would have been different, if, after the passage by Congress of the act of 1849, the United States had granted the land away from the State of Louisiana. Such was not the case; and as both the acts of 1834 and of 1849 were grants of land to the State, we cannot go behind the patent which the State has granted." From this it is clear that there was no decision against the validity of a treaty or statute of, or an authority exercised under, the United States, &c., &c., in the highest court of Louisiana; and that inasmuch as no error can be assigned or regarded as a ground of reversal, other "than such as appears on the face of the record, and immediately respects the questions of validity or construction," &c., therefore, there was no right to a writ of error in this case, and that the case must be dismissed for want of jurisdiction. 1 Statutes at Large, p. 85, sec. 25; Almonester *v.* Kenton, 9 Howard, 1.

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

This is a writ of error to the Supreme Court of the State of Louisiana.

It appears that a petitory action was brought by Scudday, the defendant in error, against Shaffer, the plaintiff in error, to recover a quarter section of land described in the pleadings.

The defendant in error derives his title in the following manner: By the eighth section of an act of Congress of the 4th September, 1841, the Government of the United States granted to each of the several States specified in the act, and among them to Louisiana, 500,000 acres of land, for the purposes of internal improvement. The act provided that the selections of the land were to be made in such manner as the Legislature of the State should direct, the locations to be made on any public lands, except such as were or might be reserved from sale by any law of Congress, or proclamation of the President of the United States. The ninth section of the act provided that the net proceeds of the sales of the lands so granted should be applied to objects of internal improvement within the State, such as roads, railways, bridges, canals, and improvement of water-courses and draining of swamps. An act of the Legislature of Louisiana of 1844 provided that warrants for the location of the lands should be sold in the same manner as the lands were located; and it was made the duty of the Governor to issue patents for the lands located by warrants, whenever he should be satisfied that they had been properly located. The defendant in error, being the holder of such a warrant, located it on

the land claimed in the suit. The location having been approved by the Secretary of the Interior, and a certificate to that effect granted by the register, the Governor of Louisiana issued a patent to the plaintiff, bearing date 12th November, 1852.

The opposing title of plaintiff in error is derived under an act of Congress of March 2d, 1849, and certain acts of the Legislature of the State, passed to carry into effect the act of Congress. The first section of the act of Congress of 1849 declares, "that to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of the swamp and overflowed lands which are or may be found unfit for cultivating, shall be, and the same are hereby, granted to the State."

The second section provides, that as soon as the Secretary of the Treasury shall be advised by the Governor of Louisiana that the State has made the necessary preparations to defray the expenses thereof, he shall cause a personal examination to be made, under the direction of the surveyor general thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation, and a list of the same to be made out and certified by the deputies and the surveyor general to the Secretary of the Treasury, who shall approve the same, so far as they are not claimed and held by individuals; and on that approval the fee simple to said lands shall vest in the State of Louisiana, subject to the disposal of the Legislature thereof, provided, however, that the proceeds of said lands shall be applied exclusively, as far as necessary, to the construction of the levees and drains aforesaid.

On the 21st of March, 1850, the Legislature of Louisiana passed an act to enable the Governor to have the swamp and overflowed lands selected; and, in 1852, they passed an act, giving a preference in entering such lands to those in possession of or cultivating them, and the time of entering them was further extended by an act of 1853. The plaintiff in error entered this land on the 18th day of July, 1853, by virtue of a preference-right claimed under that act of the Legislature. He was permitted to make this entry at the State land office, in consequence of the Secretary of the Interior having, on the 14th of April, revoked his approval to the State under the act of 1841, of this and other lands which had been located under warrants sold by the State, in conformity to the act of the Legislature of 1844.

The reason assigned by the Secretary of the Interior was, that these locations had been made subsequent to the passage of the act of Congress of 1849, granting to the State all the swamp and overflowed lands. He states, in his opinion, that he considered the words used in the first section of that act as

importing a grant *in presenti*, and as confirming a right to the land, though other proceedings were necessary to perfect the title; and that when the title was perfected, it had relation back to the date of the grant. His approval to the State, of the location of the land in controversy, under the internal-improvement law of 1841, was revoked, but the land was at the same time approved to the State, as having a vested title to it, under the act of 1849, and taking effect from the date of the passage of the act.

The controversy between the parties arises upon these two patents, both granted by the State of Louisiana—the one to Scudday, under the grant made by the act of Congress of 1841, for the purposes of internal improvement; the other to Shaffer, under the grant made by the act of 1849, for the purpose of draining the swamp lands.

The case came regularly before the Supreme Court of the State; and that court, after stating that it was unnecessary to decide whether the construction placed upon the act of 1849, by the Secretary of the Interior, under which he revoked his approval of Scudday's location, was erroneous or not, proceeded to express their opinion as follows:

"It is certain (say the court) that the Legislature could not have disposed of the land as belonging to the State, under the provisions of that act, [the act of 1849,] until she had complied with the conditions imposed on her by the act of Congress, and until the approval of the Secretary of the Treasury; but if she had not chosen to avail herself of the right given to her to appropriate these lands as swamp lands by defraying the expenses of locating them, she had still the right of locating them under the internal-improvement law of 1841, which was unconditional. The construction of the act of 1849, by the Secretary of the Interior, may be strictly correct; and yet it does not follow that the location of a warrant, under the internal-improvement law of 1841, which had been approved by the proper department of the Government, and for which a patent had been subsequently issued by the State, could be revoked, so as to destroy the title conferred by the patent. The question would have been different, if, after the passage by Congress of the act of 1849, the United States had granted the land away from the State of Louisiana. Such was not the case; and as both the acts of 1841 and of 1849 were grants of land to the State, we cannot go behind the patent which the State has granted. The patent can only be attacked on the ground of error or fraud. It is true that a patent issued against law is void; but in the present case the patent and all the proceedings on which it was based were in conformity to

the laws. As between the Government of the United States and the State of Louisiana, a question will arise, whether the State is not entitled to an additional quantity of land, to be located under the act of Congress of 1841, in consequence of the swamp lands having been appropriated for locations of warrants issued under the internal-improvement act; but we are of opinion that the title which the State has granted to the plaintiff, and for which she has been paid, is unaffected by the acts of the officers of the United States Government and of the State Government, done since the patent was issued."

Upon these grounds, the Supreme Court of the State gave judgment in favor of Scudday, and this writ of error is brought to revise that decision.

It does not appear from the opinion of the court, as above stated, that any question was decided that would give this court jurisdiction over its judgment. The land in dispute undoubtedly belonged to the State, under the grants made by Congress, and both parties claim title under grants from the State. The construction placed by the Secretary upon the act of 1849, and the revocation of his order approving the location of Scudday, did not and was not intended to re-vest the land in the United States. On the contrary, it affirmed the title of the State; and its only object was to secure to Louisiana the full benefit of both of the grants made by Congress, and leaving it to the State to dispose of the lands to such persons and in such manner as it should by law direct. It certainly gave no right to the plaintiff in error. He admits the title of the State, and claims under a patent granted by the State. Now, whether this patent conveyed to him a title or not, depended altogether upon the laws of Louisiana, and not upon the acts of Congress or the acts of any of the officers or authorities of the General Government. It was a question, therefore, for the State courts. And the Supreme Court of the State have decided that this patent could convey no right to the land in question, because the State had parted from its title by a patent previously granted to Scudday, the defendant in error. The right claimed by the plaintiff in error, which was denied to him by the State court, did not therefore depend upon any act of Congress, or the validity of any authority exercised under the United States, but exclusively upon the laws of Louisiana. And the Supreme Court of the State have decided that, according to these laws, he had no title, and that the land in question belonged to the grantee of the elder patent.

We have no authority to revise that judgment by writ of error; and this writ must therefore be dismissed for want of jurisdiction.