its decision available for the appellants, if its view of the merits of the case had coincided with the opinion of the district judge, or upon which its process could have been issued to carry out the judgment given by it in favor of the respondents. Nor could it have permitted an amendment of the record of appeal by the insertion of what the parties might have agreed to be a final judgment as to amount, without its having first received the judicial sanction of the district judge. And this court is as powerless in this respect as the Circuit Court was, as its jurisdiction depends upon that court having a proper legislative jurisdiction of the case. It cannot overlook the fact upon which its jurisdiction depends, *by any action in the case in the Circuit Court* upon *an irregular appeal.* The case in that court was coram non judice, and is so here. The appellants have the right to the execution of the order given by the district judge to the commissioner and clerk of the court, to ascertain the charges to be made against the respective parties to the suit, and to state an account between them; for which purpose he was authorized to use the testimony already reported, and such further testimony as might be brought before him in relation to that point. *That* the Circuit Court cannot direct to be done, nor can this court do so. All that we can do in the case, as it stands here, is to reverse the decree of the Circuit Court dismissing the appellants' libel, to send the case back to the Circuit Court, that the appeal in it may be dismissed by it for want of its jurisdiction, leaving the case in its condition before the appeal to that court, that the parties may carry out the case in the District Court to a final decree, upon such a report as the commissioner and clerk may make, according to the order which was given by the judge. The judgment of the Circuit Court is reversed accordingly.

TERENCE COUSIN, PLAINTIFF IN ERROR, *v.* FANNY LABATUT, WIDOW AND TESTAMENTARY EXECUTRIX, JULES A. BLANC, CO-EXECUTOR, AND OTHERS, LEGAL REPRESENTATIVES OF EVARISTE BLANC.

In Louisiana, all the evidence taken in the court below goes up to the Supreme Court, which decides questions of fact as well as of law. In the absence of bills of exceptions, setting forth the points of law decided in the case, this court must look to the opinion of the State court, (made a part of the record by law,) in order to see whether or not any question has been decided there which would give this court appellate jurisdiction, under the twenty-fifth section of the judiciary act.

A claim to land in Louisiana was presented to the commissioner appointed under the act of 1812, (2 Stat. at L., 713,) reported favorably upon by him to Congress,

and confirmed by the act of 1819, (3 Stat. at L., 528.) But it did not appear that this claim had been surveyed, or that it had any definite boundaries.

In 1820, the register and receiver gave to the claimant a certificate that he was entitled to a patent, but without saying how it was to be located.

In 1822, Congress passed an act (3 Stat. at L., 707) giving to the registers and receivers power to direct the location and manner of surveying the claims to land confirmed by the act of 1819.

In 1826, the register and receiver ordered the claim to be surveyed, speaking of it, however, as being derived from an original claimant, different from the person who was mentioned as the original claimant in the certificate of 1820.

The act of 1822 was remedial, and this difference was immaterial.

When the survey was executed according to that order, it gave a prima facie title, and the United States were bound by it until it was set aside at the General Land Office. The Supreme Court of Louisiana were in error when they decided that it gave no title, and this court has jurisdiction, under the twenty-fifth section of the judiciary act, to review that judgment.

But until the survey was made and approved, the United States could sell the land, and a purchase of a part of it must stand good.

THIS case was brought up, from the Supreme Court of the State of Louisiana, by a writ of error issued under the twenty-fifth section of the judiciary act.

As this case will probably be much referred to hereafter, as settling some general principles of great importance, it may be well to state in this report the precise nature of the certificates of confirmation and order of survey.

Under the act of Congress of April 25, 1812, (2 Stat. at L., 713,) Cousin presented a donation claim to the commissioners appointed under that act. On the 2d of January, 1816, the commissioners reported as follows upon this claim, calling it No. 255, and placing it in class B. (See American State Papers, Public Lands, vol. 3, p. 56.)

By whom claimed.	Original Claimant.	Nature of claim, and from what authority derived.
F. Cousin.....	Stephen Réné.....	Order of survey.

Date of claim.	Quantity claimed.	Where situated.	By whom issued.	When surveyed.
Sept. 10, 1789..	1,000.....	St. Tammany...	E. Miro.....	

By whom surveyed.	Inhabited and cultivated from to	General remarks.

It will be observed that the name of the original claimant is here said to have been Stephen Réné. No survey or location of the land was made under this certificate.

In 1819, Congress passed an act (3 Stat. at L., 528) confirming this claim amongst many others, and on the 8th of June, 1820, the register and receiver gave to Cousin the following certificate:

[Certificate of Confirmation.]

Commissioner's Report, Letter B, Certificate No. 178.

LAND OFFICE, ST. HELENA.

In pursuance of the act of Congress passed the 3d of March, 1819, entitled "An act for adjusting the claims to land, and establishing land offices for the district east of the island of New Orleans," we certify that claim No. 255, in the report of the commissioner marked B, claimed by Francis Cousin, original claimant, Stephen Réné, is confirmed as a donation, and entitled to a patent for one thousand arpens, situated in St. Tammany, and claimed under an order of survey dated 10th September, 1798.

Given under our hands, this 8th day of June, 1820.

Attest: (Signed) CHARLES S. COSBY, *Register.*
F. HERAULT, *Clerk.*
FULWER SKIPWITH, *Receiver.*

It will be observed that the name of the original claimant is here mentioned as Stephen Réné, and there is no mode of survey pointed out, the original order of survey not being produced.

In 1822, Congress passed an act (3 Stat. at L., 707) giving to the registers and receivers power to direct the location and manner of surveying the claims to land confirmed by the act of 1819.

On the 21st of September, 1826, the register and receiver gave to Cousin the following order of survey:

[Order of Survey.]

LAND OFFICE, ST. HELENA.

Francis Cousin, Certificate No. 178, }
Dated June 8th, 1820. }

ST. TAMMANY, *Sept.* 21, 1826.

Francis Cousin claims a tract of one thousand arpens of land, situate in the parish of St. Tammany, as purchaser from his father, Francis Cousin, deceased, who bought it from Louis Blanc, who bought it from the original owner, Gabriel Bertrand, and in virtue of certificate No. 178, dated 8th June, 1820, and signed Charles S. Cosby, register, and Fulwer Skipwith,

receiver, in which certificate it is alleged by this claimant that it is erroneously set forth that Stephen Réné was the original claimant; it appearing that this tract of land is fronting on Bayou la Liberté, bounded below by the tract of land of Mr. Girod, and above by a tract of land belonging to claimant.

It is ordered that this claim be located and surveyed with a front extending on said bayou, from the land of said Girod to that of claimant above, and from these points on the bayou to run back for quantity.

Given under our hands, this 21st day of September, 1826.

(Signed) SAMUEL J. RANNELLS, *Register.*
WILL KINCHEN, *Receiver.*

The difference between this certificate and the other, as respects the derivation of title, will be manifest upon comparing the two.

Upon this subject, the Supreme Court of Louisiana made the following remarks:

"The counsel for plaintiff also objects to the certificate of 8th June, 1820, on account of the vagueness of description of the land donated. We consider this objection to be well founded. The description is, 'One thousand arpens, situated in St. Tammany.' It is plainly impossible to locate land by such a description as this. And when such is the case, the grant can produce no effect. (16 Peters, U. S. *v.* Miranda; 10 Howard, Villalobos *v.* U. S.; 15 Peters, U. S. *v.* Delestine; 11 Howard, Lecompte *v.* U. S.; 5 Annual, Ledoux *v.* Black.)

"It is proper here to mention that the order of survey of 10th September, 1798, mentioned in the certificate, is not produced, although formally called for by the opposite party. Had such an order of survey ever been given in evidence before the commissioner of land claims, it would have been recorded in the archives of the land office. (See acts of Congress of 1812 and 1819, above quoted.)

"But no such record appears.

"It was probably a consciousness of this defect in his title, which induced the defendant's ancestor to procure from Rannells and Kinchen, the successors of Cosby and Skipwith in the office of register and receiver of the land office at St. Helena, the order of location and survey of the 21st September, 1826, which the defendants offer in evidence.

"This paper sets out by declaring that the first certificate had erroneously stated the origin of defendant's title, gives another and totally different origin to the same as the correct one, and orders a survey to be made, and the defendant's donation to be located on the Bayou Liberté, between the lands

of certain proprietors named. The survey of Vanzandt was made in conformity to this order.

"We view the amended certificate of the 21st September, 1826, and the survey under it, as nullities. For the certificate of Cosby and Skipwith followed strictly the report of the commissioner of land claims, confirmed by the act of Congress of 3d March, 1819. Therefore, in correcting that certificate, Rannells and Kinchen took upon themselves to correct the report of the commissioner of land claims, and to make the act of Congress apply to a claim which was not mentioned in that report, and which was consequently never before Congress.

"The Supreme Court of this State, in the case of Newport *v.* Cooper, (10 La. Rep.,) decided that the register and receiver of the land office at St. Helena were without power, by law, to reverse and annul a certificate granted by their predecessors. By parity of reasoning, are they without power to make amendments in such a certificate, which falsify the act of Congress on which the first certificate was based? If the claimant could not locate the land claimed by him, under his claim as presented to the commissioner of land claims, and reported to Congress, that was a misfortune which the land officers at St. Helena had no power to remedy, by fabricating for him a new claim, seven years after the action of Congress upon the report."

Under the order of September 21, 1826, Vanzandt made a survey in 1845, which was one of the evidences of Cousin's title.

The history of the case in the State courts of Louisiana is given in the opinion of this court.

It was argued by *Mr. Janin* for the plaintiff in error, and *Mr. Benjamin* for the defendants.

Mr. Justice CATRON delivered the opinion of the court.

Evariste Blanc sued Terence Cousin, in the eighth District Court of Louisiana, invoking the aid of that court to settle a disputed boundary between the plaintiff and defendant.

Cousin, instead of responding to the action, for the purpose of settling boundary, filed an answer, denying Blanc's *title* to the property described in his petition, and setting up title in himself, and claiming damages against Blanc, who joined issue on the answer, and denied the validity of the title asserted by Cousin. This turned Cousin into a plaintiff, (as the State courts held,) and imposed on him the burden of proof to support his title. It was adjudged in the District Court, on the documents presented by Cousin, that he had no title whatever to any part of the land in dispute; and so the Supreme

Court of Louisiana held on an appeal to that court, where the cause was reheard.

Pending the appeal, Blanc died, and his widow and heirs were made parties. They prayed the benefit of the judgment of the court below, and also that it might be so amended by the Supreme Court as to give them the benefit of all that Blanc claimed in his petition—that is to say, 222.80 acres, according to certificate No. 1,280, showing a regular purchase from the United States; together with 1,240 arpens in superficies, according to a plan annexed to the original petition of Blanc; that they might be quieted in the possession thereof as owners, and that the 1,240 arpens may be bounded according to the plan. And to this effect the court gave judgment.

The laws of Congress, and the acts of the officers executing them in perfecting titles to public lands, have been drawn in question, and construed by the decision of the Supreme Court of Louisiana in this case; and the decision being against the title set up by Cousin, under the acts of Congress and the authority exercised under them, it follows that jurisdiction is vested in this court, by the 25th section of the judiciary act, to examine the judgment of the State court; and, in doing so, we refer to the opinion of that court, which is made part of the record by the laws of Louisiana, and is explanatory to the judgment, of which it is there deemed an essential part. We refer to the opinion, in order to show that questions did arise and were decided, as required, to give this court jurisdiction. (9 How., 9.) This is necessarily so in cases brought here by writ of error to the courts of Louisiana, because no bill of exceptions is necessary there, when appeals are prosecuted. The court of last resort acts on the law and facts as presented by the whole record.

By relying on this source of information, as to what questions were raised and were decided by the State court, we are relieved from all difficulty in this instance.

Cousin's claim is assumed to have originated in a Spanish order of survey laid before the proper commissioner appointed under the act of April 25, 1812, whose duty it was to receive notices and evidences of claims, which were ordered to be recorded by the commissioner. It was made the duty of the commissioner to report to the Secretary of the Treasury upon claims, and the evidences thereof, thus notified to him; which report the act directed should be laid before Congress by the Secretary.

In January, 1816, the report was transmitted by him to Congress. By the act of March 3d, 1819, Congress legislated in regard to the claims reported. By that act, two land

districts were established east of the island of New Orleans, and a register and receiver were provided for each.

The books of the former commissioners, in which the claims and evidences of claims were recorded, were directed to be lodged with the register; and the register and receiver were vested with power "to examine the claims recognised, confirmed, or provided to be granted," by the provisions of that act; they were instructed to make out, for each claimant entitled in their opinion thereto, a certificate according to the nature of the case, pursuant to the instructions of the Commissioner of the General Land Office; and, on the presentation at that office of such certificate, a patent was ordered to be issued. Francis Cousin's claim was within the above description.

As no provision was made by the act of 1819, vesting authority in the register and receiver to direct in what manner confirmed claims should be located and surveyed, it was (sec. 11) left to the deputies of the principal surveyor south of Tennessee, to find the lands, and survey them according to their own judgment. Then, again, the surveyors had no authority to adjust conflicting boundaries, and therefore further legislation was deemed necessary; and accordingly the act of June 8, 1822, was passed by Congress, giving the registers and receivers power to direct the manner in which claims should be located and surveyed, (sec. 4,) and power was also given to them to decide between parties whose claims conflicted.

In June, 1820, the register and receiver gave Cousin a certificate of confirmation under the act of 1819. They certify "that claim No. 255 in the report of the commissioner, marked B, claimed by Francis Cousin, original claimant Stephen Réné, is confirmed as a donation, and entitled to a patent for one thousand arpens, situated in St. Tammany, and claimed under an order of survey dated 10th September, 1798."

No Spanish survey was found, to aid the foregoing description.

In 1826, the register and receiver made an order of survey, as follows:

"*Land Office, St. Helena.*

"FRANCIS COUSIN, CERTIFICATE No. 178, DATED JUNE 8TH, 1820.

"Francis Cousin claims a tract of one thousand arpens of land, situate in the parish of St. Tammany, as purchaser from his father, Francis Cousin, deceased, who bought it from Louis Blanc, who bought it from the original owner, Gabriel Bertrand, and in virtue of certificate No. 178, dated 8th June, 1820, and signed Charles S. Cosby, register, and Fulwer Skipwith, receiver, in which certificate it is alleged by this claimant that it is erroneously set forth that Stephen Réné was the original claimant; it appearing that this tract of land is front-

ing on Bayou la Liberté, bounded below by the tract of land of Mr. Girod, and above by a tract of land belonging to claimant.

"It is ordered that this claim be located and surveyed with a front extending on said bayou, from the land of said Girod to that of claimant above, and from these points on the bayou to run back for quantity."

The Supreme Court of Louisiana held the certificate of 1820 so vague as not to be of any value, and pronounced it void. Furthermore, that the second one of 1826 departed from the confirmation, and was also invalid. The first purported to be for land derived from Stephen Réné, as original claimant; and the second, for land of which Gabriel Bertrand was the original owner.

The act of 1822 is a supplement to the act of 1819; when taken together, they gave the register and receiver authority to declare what land had been confirmed, and how it should be surveyed. Now, if it be true, as is held by the State court, that the certificate of 1820 is so vague as to be of no value and void, then it follows, that another could be made in 1826 which would be certain in its description of the land confirmed, accompanied by an order of survey. Whether Réné or Bertrand once claimed the land, is immaterial. The confirmation is an incipient United States title, conferred on Cousin, which our Government, in its political capacity, reserved to itself the power to locate by survey, and to grant by the acts of its executive officers; with which acts the courts of justice have no jurisdiction to interfere. (16 How., 403, 414.)

It rested with the register and receiver to ascertain the location of the land confirmed to Cousin, from the evidences of claim recorded and filed with the register; and having decided where and how the land should be located and surveyed, the courts of justice cannot reverse that decision; the power of revision is vested in the Commissioner of the General Land Office.

It is proper here to say, we do not hold that the certificate of 1820 was void, because it was too vague to authorize a survey of the land. It established the *fact* that Cousin's claim was one of those described in the act of 1819, which had been confirmed. The act of 1822 was remedial; its main object was to confer power on the register and receiver to amend vague descriptions; so vague that patents could not issue on them, as required by the act of 1819.

The amendment was effectually made in this instance by the order of survey of 1826; and, when the survey was executed according to that order, the United States Government

was bound by it until it was set aside at the General Land Office.

The act of March 3, 1831, authorized a surveyor general to be appointed for the State of Louisiana, whose duty it was to cause confirmed claims to be surveyed; and the registers and receivers were again empowered (sec. 6) to decide in cases of contested boundaries, and consequently to control the surveys. On the 22d of December, 1846, the official survey (accompanied by a plat) of the claim of Francis Cousin, was approved at the surveyor general's office. This is known as Vanzandt's survey, and is the one relied on by Cousin in his defence. A copy thereof, duly certified as a record of the surveyor general's office, is found in the record; and which copy the act of 1831 (sec. 5) declares shall be admitted as evidence in the courts of justice.

The act of 1831 (sec. 6) further declares (as respects interfering claims) "that the decisions of the register and receiver, and the surveys and patents that may be issued in conformity thereto, shall not in anywise be considered as precluding a legal investigation and decision by the proper judicial tribunals between the parties to any such interfering claims, but shall only operate as a relinquishment on the part of the United States of all title to the land in question." The foregoing reservation applies here; Cousin's survey extended in depth, from Bayou Liberté, so as to include 222.80 acres of land, which had been purchased of the United States by Francis Alpuente, and on the 4th of March, 1844, (before Cousin's survey was made,) duly conveyed to the plaintiff, Blanc, as part of the succession of Alpuente.

Title to this land is claimed by Cousin by force of his confirmation, rendered certain by his survey of 1846; and which claim was rejected by the Supreme Court of Louisiana, when they rejected Cousin's title as set up.

We are of opinion that Cousin's title had no standing in a court of justice until the land was surveyed, and the survey approved as a proper one at the surveyor general's office; and that therefore the United States could lawfully sell the land, and give title to Alpuente. (8 How., 306.) The mere loose *order* of survey, made in 1826, by the register and receiver, cannot be recognised in this case as conferring any vested interest, as against Alpuente, to the 222.80 acres purchased by him; and to this extent the decision of the Supreme Court of Louisiana is proper. But as respects all other parts of Cousin's survey, it furnishes *prima facie* evidence of title in him, subject to be contested by the opposing title of Blanc, if he has any by prescription or otherwise.

We order that the judgment be reversed, and the cause remanded to the Supreme Court of Louisiana, to be further proceeded in.

ISAAC HARTSHORN AND DANIEL HAYWARD, PLAINTIFFS IN ERROR *v.* HORACE H. DAY.

Where a patentee is about to apply for a renewal of his patent, and agrees with another person that, in case of success, he will assign to him the renewed patent, and the patent is renewed, such an agreement is valid, and conveys to the assignee an equitable title, which can be converted into a legal title by paying, or offering to pay, the stipulated consideration.

An agreement between Chaffee, the patentee, and Judson, after the renewal, reciting that the latter had stipulated to pay the expenses of the renewal, and make an allowance to the patentee of $1,200 a year, during the renewed term, and then declaring: "Now, I (Chaffee) do hereby, in consideration of the premises, and to place my patent so that in case of my death, or other accident or event, it may enure to the benefit of Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees, &c., nominate, constitute, and appoint, said William Judson my trustee and attorney irrevocable, to hold said patent and have the control thereof, so as none shall have a license to use said patent or invention, &c., other than those who had a right when said patent was extended, without the written consent of said Judson, &c.," passed the entire ownership in the patent, legal and equitable, to Judson, for the benefit of Goodyear and those holding rights under him.

If this annuity was not regularly paid, the original patentee had no right to revoke the power of attorney, and assign the patent to another party. His right to the annuity rested in covenant, for a breach of which he had an adequate remedy at law.

Evidence tending to show that the agreement between the patentee and the attorney had been produced by the fraudulent representations of the latter, in respect to transactions out of which the agreement arose, ought not to have been received, it being a sealed instrument.

In a court of law, between parties or privies, evidence of fraud is admissible only where it goes to the question whether or not the instrument ever had any legal existence. But it was especially proper to exclude it in this case, where the agreement had been partly executed, and rights of long standing had grown up under it.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Rhode Island.

It was an action brought by Day against Hartshorn and Hayward, for the violation of a patent for the preparation and application of India-rubber to cloths, granted to E. M. Chaffee in 1836, and renewed for seven years in 1850. Day claimed under an assignment of this patent from Chaffee, on the 1st of July, 1853. The defences taken by Hartshorn and Hayward are stated in the opinion of the court, in which there is also a succinct narrative of the whole case.