It is not material in the present report to state the nature of the case.

It was argued by *Mr. Butler* for the appellant, and by *Mr. Johnson* for the appellees.

Mr. Justice CURTIS delivered the opinion of the court.

This is an appeal from the decree of the District Court of the United States for the northern district of Alabama, having the powers of a circuit court. The appellant filed his bill in that court to charge a legacy on property alleged to have come to the hands of the respondents, and to be chargeable with its payment. After answers had been filed, and while exceptions to one of the answers were pending, the respondents moved to dismiss the bill for want of equity, and the court ordered it to be dismissed. This was irregular, and the decree must be reversed. It is understood to be in conformity with the practice of the State courts of Alabama to entertain such a motion at any stage of the proceedings. But the equity practice of the courts of the United States is governed by the rules prescribed by this court, under the authority conferred upon it by the act of Congress, (McDonald *v.* Smalley, 1 Pet., 620,) and is the same in all the States. And this practice does not sanction the dismissal of the bill on a motion made while the parties are perfecting the pleadings. The question whether the bill contains any equity, may be raised by a demurrer. If the defendant answer, this question cannot be raised until the hearing. Non constat that a defect may not be removed before the hearing.

The case must be remanded to the Circuit Court, and if any defects exist in the bill capable of being cured by amendments, as no replication has been filed, it is within the rules of ordinary practice to allow them to be made.

The United States, Plaintiff in Error, *v.* Charles Le Baron.

A deed speaks from the time of its delivery, not from its date.

The bond of a deputy postmaster takes effect and speaks from the time that it reaches the Postmaster General and is accepted by him, and not from the day of its date, or from the time when it is deposited in the post office to be sent forward.

The difference explained between a bond of this description and a bond given by a collector of the customs.

The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States, are all the acts necessary to render the appointment complete.

Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office.

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

It was an action of debt upon the bond of a deputy postmaster at Mobile, signed Oliver S. Beers, the officer, and Charles Le Baron and George N. Stewart, his sureties.

The statement of the case contained in the opinion of the court renders it unnecessary to recite the demurrers to the declaration and pleas, or the replications and rejoinders which were in the record. The point in controversy was found in the following charge given to the jury:

Upon this evidence the court charged the jury, that the recital in the condition of the bond sued on, "whereas Oliver S. Beers is deputy postmaster at Mobile," relates to the office he held when the bond was signed, and could not refer to a term of office not yet commenced.

The court further charged and said, that, according to the strict propriety of language, the said recital relates to the precise period of time when the recital was written, (speaking as it does of the present time,) and not to the time when it was executed by its delivery, which the admitted proof shows took place on a subsequent day.

That at the time said bond was signed, the said Beers was not in office under his appointment, by and with the advice and consent of the Senate, and therefore they, the jury, ought to find for the defendant.

To which charge of the court the plaintiffs, by their attorneys, then and there excepted, and asked the court to charge the jury that the bond related to, and was intended to provide, a security for the faithful discharge by Beers of the duties of the office of deputy postmaster at Mobile, under the appointment by and with the consent of the Senate; which charges the court refused to give; and plaintiffs then and there excepted, and asked the court to charge the jury that it was for them to determine to which term of said office the said bond related, and that the recital in it, that "Beers is deputy postmaster at Mobile," must be considered as made at the time when the bond was delivered and executed; which charge the court also refused to give; and the plaintiffs then and there

excepted to such refusal, and prayed the court to sign and seal this their bill of exceptions, which is done accordingly, in term time.

JOHN GAYLE, *Judge.* [SEAL.]

The case was argued by *Mr. Cushing* (Attorney General) for the United States, and by *Mr. Stewart* for the appellee.

Mr. Justice CURTIS delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the southern district of Alabama, in an action of debt, founded on an official bond of Oliver S. Beers, as deputy postmaster at Mobile, the defendant being one of his sureties.

It appeared, on the trial in the Circuit Court, that Beers was appointed to that office by the President of the United States, during the recess of the Senate, and received a commission, bearing date in April, 1849, to continue in force until the end of the next session of the Senate, which terminated on the thirtieth day of September, 1850.

It also appeared, that in April, 1850, Beers was nominated by the President to the Senate, as deputy postmaster at Mobile; and the nomination having been duly confirmed, a commission was made out and signed by President Taylor, bearing date on the twenty-second day of April, 1850; but it had not been transmitted to Beers on the first day of July, 1850, when the bond declared on bears date. Beers took charge of the post office at Mobile before his second appointment, and continued to act, without intermission, until he was removed from office in February, 1853. The default, assigned as a breach of the bond, was admitted to have occurred under his second appointment; and the principal question upon this writ of error is, whether the bond declared on secures the faithful performance of the duties of the office under the first or under the second appointment.

The condition of the bond recites: "Whereas the said Oliver S. Beers is deputy postmaster at Mobile aforesaid," &c.

The first inquiry is, to what date is this recital to be referred? The district judge, who presided at the trial, ruled that it referred to the office held by Beers when the bond was signed. The delivery of a deed is presumed to have been made on the day of its date. But this presumption may be removed by evidence that it was delivered on some subsequent day; and when a delivery on some subsequent day is shown, the deed speaks on that subsequent day, and not on the day of its date.

In Clayton's case, (5 Co., 1,) a lease, bearing date on the 26th of May, to hold for three years "from henceforth," was

delivered on the 20th of June. It was resolved, that "from henceforth" should be accounted from the day of delivery of the indentures, and not from the day of their date; for the words of an indenture are not of any effect until delivery—*traditio loqui facit chartam.*

So in Ozkey *v.* Hicks, Cro. Jac., 263, by a charter-party, under seal, bearing date on the 8th of September, it was agreed that the defendant should pay for a moiety of the corn which then was, or afterwards should be, laden on board a certain vessel. The defendant pleaded that the deed was not delivered until the 28th of October, and that on and after that day there was no corn on board; and on demurrer, it was held a good plea, because the word *then* was to be referred to the time of the delivery of the deed, and not to its date.

And the modern case of Steele *v.* March, 4 B. and C., 272, is to the same point. A lease purported on its face to have been made on the 25th of March, 1783, habendum from the 25th of March *now* last past. It was proved that the delivery was made after the day of the date, and the Court of King's Bench held that the word *now* referred to the time of delivery, and not to the date of the indenture.

At the trial in the Circuit Court, it appeared that on the day after the date of the bond, Beers, in obedience to instructions from the Postmaster General, deposited it, together with a certificate of his oath of office under his last appointment, in the mail, addressed to the Postmaster General at Washington.

In Broome *v.* The United States, 15 How., 143, it was held that a collector's bond might be deemed to be delivered when it was put in a course of transmisson to the Comptroller of the Treasury, whose duty it is to examine and approve or reject such bonds. But this decision proceeded upon the ground that the act of Congress requiring these bonds, and their approval, had allowed the collector to exercise his office for three months without a bond; and that consequently the approval and delivery were not necessarily simultaneous acts, nor need the approval precede the delivery; and the distinction between bonds of collectors and those of postmasters is there adverted to. The former may take and hold office for three months without a bond. The latter must give bond, with approved security, on their appointment; and there is no time allowed them, after entering on their offices, to comply with this requirement. The bond must therefore be accepted by the Postmaster General, as sufficient in point of amount and security, before it can have any effect as a contract. Otherwise, the postmaster might enter on the office merely on giving

a bond, which, on its presentation, the Postmaster General might reject as insufficient.

In other words, the person appointed might act without any operative bond, which, we think, was not intended by Congress. It is like the case of Bruce et al. *v.* The State of Maryland, 11 Gill and John., 382, where it was held that the bond of a sheriff took effect only when approved by the county court; because it was only on such approval that the sheriff was authorized to act.

The purpose of the obligee was to become security for one legally authorized to exercise the office; not for one who enters on it unlawfully, because he failed to comply with the requirement to furnish an approved bond; and this purpose can be accomplished only by holding that the appointee cannot act, and the bond cannot take effect, until it is approved. Our opinion is, therefore, that this bond speaks only from the time when it reached the Postmaster General, and was accepted by him; that until that time it was only an offer, or proposal of an obligation, which became complete and effectual by acceptance; and that, unlike the case of a collector's bond, which is not a condition precedent to his taking office, and which may be intended to have a retrospective operation, the bond of a postmaster, given on his appointment, cannot be intended to relate back to any earlier date than the time of its acceptance, because it is only after its acceptance that there can be any such holding of the office as the bond was meant to apply to.

Now, at the time when this bond was accepted by the Postmaster General, Beers had been nominated and confirmed as deputy postmaster; he had given bond in such a penalty, and with such security, as was satisfactory to the Postmaster General; he had taken the oath of office, and there was evidence that a certificate thereof had been filed in the General Post Office.

Upon this state of facts, we are of opinion that at that time his holding under the first appointment had been superseded by his holding under the second appointment; and when the bond says, "is now postmaster," it refers to such holding under the second appointment, and is a security for the faithful discharge of his duties under the second appointment.

It was suggested at the argument, that this bond was not, in point of fact, taken in reference to the new appointment, but was a new bond, called for by the Postmaster General under the authority conferred on him by the act of July 2, 1836. 5 Stat. at Large, 88, sec. 37.

To this there are several answers. No such ground appears to have been taken at the trial, and the rulings of the court,

which were excepted to by the plaintffs in error, precluded any such inquiry. These rulings were, that the holding to which the bond referred was a holding on the first day of July, and that Beers was in office on that day under the first appointment, and not under the second. This put an end to the claim, and rendered a verdict for the defendant inevitable.

But if this were otherwise, parol or extraneous evidence that the bond was not intended to apply to the holding under the second appointment, because it was a new bond taken to supersede an old one, would be open to the objections which the defendants in error have so strenuously urged.

There is no ambiguity in the bond. It refers to a holding at some particular date. The law determines that date to be the time when the bond took effect. Nothing remains but to determine upon the facts, under which appointment Beers then held; this also the law settles, and when it has thus been ascertained that he then held under the second appointment, evidence to show that the bond was not intended to apply to that appointment would directly contradict the bond, for it would show it was not intended to apply to the appointment which Beers then held, while the bond declares it was so intended. The defendant in error further insists, that Beers was not in office, under the second appointment, at the time this bond took effect, because the commission sent to him was signed by President Taylor, and was not transmitted until after his death.

When a person has been nominated to an office by the President, confirmed by the Senate, and his commission has been signed by the President, and the seal of the United States affixed thereto, his appointment to that office is complete. Congress may provide, as it has done in this case, that certain acts shall be done by the appointee before he shall enter on the possession of the office under his appointment. These acts then become conditions precedent to the complete investiture of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed; and when the person has performed the required conditions, his title to enter on the possession of the office is also complete.

The transmission of the commission to the officer is not essential to his investiture of the office. If, by any inadvertence or accident, it should fail to reach him, his possession of the office is as lawful as if it were in his custody. It is but evidence of those acts of appointment and qualification which constitute his title, and which may be proved by other evi-

dence, where the rule of law requiring the best evidence does not prevent.

It follows from these premises, that when the commission of a postmaster has been signed and sealed, and placed in the hands of the Postmaster General to be transmitted to the officer, so far as the execution is concerned, it is a completed act. The officer has then been commissioned by the President pursuant to the Constitution; and the subsequent death of the President, by whom nothing remained to be done, can have no effect on that completed act. It is of no importance that the person commissioned must give a bond and take an oath, before he possesses the office under the commission; nor that it is the duty of the Postmaster General to transmit the commission to the officer when he shall have done so. These are acts of third persons. The President has previously acted to the full extent which he is required or enabled by the Constitution and laws to act in appointing and commissioning the officer; and to the benefit of that complete action the officer is entitled, when he fulfils the conditions on his part, imposed by law.

We are of opinion, therefore, that Beers was duly commissioned under his second appointment.

For these reasons, we hold the judgment of the Circuit Court to have been erroneous, and it must be reversed, and the cause remanded with directions to award a *venire facias de novo.*

THE UNITED STATES, PLAINTIFFS IN ERROR, *v.* GEORGE N. STEWART. } *In error to the Circuit Court of the United States for the southern district of Alabama.*

Mr. Justice CURTIS.

The opinion of the court, in the preceding case, determines this, and the judgment of the Circuit Court must be reversed, in conformity with that opinion.

SEBASTIAN WILLOT, JOHN MCDONALD, AND JOSEPH HUNN, PLAINTIFFS IN ERROR, *v.* JOHN F. A. SANDFORD.

Where there are two confirmations by Congress of the same land in Missouri, the elder confirmation gives the better title; and the jury are not at liberty, in an action of ejectment, to find that the survey and patent did not correspond with the confirmation.

Titles to lands thus situated could be confirmed; nor were the lands affected by the act of March 3, 1811, providing for the sale of public lands and the final adjustment of land claims.

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