register of the land office at Quincy, dated ————, which is in the words and figures following, to wit;" and that the said certificate, thus referred to, is not inserted in the exception, nor its contents stated in any part of the transcript, on consideration whereof, it is now here ordered by this court, that a writ of certiorari be and the same is hereby awarded, to be issued forthwith, and to be directed to the judges of the Circuit Court of the United States for the district of Illinois, commanding them to supply the omission above mentioned, and return a full and correct transcript to this court, with this writ, on or before the first day of the next term of this court.

Ex Parte, in the Matter of David A. Secombe.

By the rules and practice of common-law courts, it rests exclusively with the court to determine who is qualified to become or continue one of its officers, as an attorney and counsellor of the court; the power being regulated, however, by a sound and just judicial discretion—guarding the rights and independence of the bar as well as the dignity and authority of the court.

The local law of the Territory of Minnesota has regulated the relation between courts and attorneys and counsellors, but has not essentially changed the common-law principle.

The Minnesota statute authorizes the court to dismiss an attorney or counsellor if he does not maintain the respect due to courts of justice and judicial officers, or for not conducting himself with fidelity to the court.

The Supreme Court of the Territory dismissed the relator from the office of counsellor and attorney of the court, stating in the sentence of dismissal that he was guilty of the offences above mentioned, but not specifying the act or acts which, in the opinion of the court, constituted the offence.

The order of dismissal is a judicial act done in the exercise of a judicial discretion vested in the court by law; and a mandamus cannot be issued by a superior or appellate court, commanding it to reverse its decision and restore the relator to the office he has lost.

This was a motion for a mandamus to be directed to the judges of the Supreme Court of the Territory of Minnesota, commanding them to vacate and set aside an order of the court, passed at January term, 1856, whereby the said Secombe was removed from his office as an attorney and counsellor of that court.

The subject was brought before this court by the following petition and documents in support of it:

To the Hon. the Judges of the Supreme Court of the United States:

The petition of David A. Secombe respectfully showeth:

That he resides in the city of St. Anthony, in the Territory of Minnesota; that on the ninth day of July, 1852, he was duly admitted and sworn to practice as an attorney and coun-

sellor at law and solicitor in chancery of the said Supreme Court of the Territory of Minnesota, and was thereby entitled also to practice as such in the various District Courts of said Territory, as will appear by the certificate of the clerk of the said Supreme Court, hereunto annexed and made part of this petition; that from the said time up to the 5th day of February, 1856, he was a practising attorney and counsellor as aforesaid in the said courts, and solely thereby obtained the means of support for himself and his family; that on the said 5th day of February, an order of the said Supreme Court was made, and entered of record, to remove him from his said office of attorney and counsellor, and to forbid and prohibit him from practising as such attorney and counsellor in any of the said courts, an exemplification of which said order, with the certificate of the clerk of the said court accompanying the same, is hereunto annexed, and made part of this petition; that, previously to the making and entry of said order, no notice or information whatever was given to or had by him, that any accusation whatever had been made or entertained, or any proceedings had or were about to be made, entertained, or had, against or in relation to him, in the said premises; that he was not present in court at the time of the making and entry of said order, nor did he have any knowledge whatever of the same until several days thereafter, and then only by rumor; that there existed no good cause whatever, as your petitioner believes, for the making of the said order; that he has no knowledge or information, or means of obtaining either, save by rumor, of the alleged cause of the making of the said order; that in consequence of the making and entry of the said order, he has been and now is hindered and prevented from practising as such attorney and counsellor in any of the said courts, and thereby has lost the said means of providing for the support of himself and his family; that he believes that the said order of court is not only *in fact* entirely without cause, but also *in law* wholly null and void; and that in the said premises "he has been deprived of his liberty and property without due process of law."

Wherefore, your petitioner prays that this honorable court will allow and cause to be issued the United States writ of mandamus to the judges of the Supreme Court of the Territory of Minnesota aforesaid, commanding them to vacate, set aside, and disregard, the said order of court by them made and entered, that thereby speedy justice may be done to your petitioner in this behalf; and thus will your petitioner, as in duty bound, ever pray. DAVID A. SECOMBE.

Dated May 30, 1856.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Then comes before me, personally, David A. Secombe, the above and foregoing named petitioner, and being by me duly sworn, deposes and says, that the statements made in the above and foregoing petition, by him subscribed, are true of his own knowledge, except to those matters therein stated on his information or belief; and as to those matters, that he believes them to be true.

[SEAL.] N. CALLAN, J. P.

SUPREME COURT,
Territory of Minnesota:

Ordered, That Isaac Van Etten, Theodore Parker, De Witt C. Cooley, David A. Secombe, William H. Welch, Charles L. Willis, Lucas R. Stannard, Edward L. Hall, Warren Bristol, and William H. Wood, be sworn and admitted to practice as attorneys and counsellors at law and solicitors in chancery of this court.

I, George W. Prescott, clerk of the Supreme Court above named, certify that the above is a true copy of an order of said court, entered of record upon the "minutes of court" for and upon the 9th day of July, A. D. 1852, being the 4th day of the general term of said court for said year.

In testimony whereof, I have hereunto set my hand [SEAL.] and affixed the seal of said Supreme Court, at St. Paul aforesaid, this 7th day of May, A. D. 1856.

GEORGE W. PRESCOTT, *Clerk.*

SUPREME COURT,
Territory of Minnesota:

JANUARY GENERAL TERM, A. D. 1856, 17TH DAY, TUESDAY MORNING, FEBRUARY 5, 1856.

Court met pursuant to adjournment.

Present, Chief Justice Welch and Justice Chatfield.

It appearing to this court that David A. Secombe, one of the attorneys thereof, has by his acts as such in open court, at the present term thereof, been guilty of a wilful violation of the second subdivision of section seven of chapter ninety-three of the revised statutes of this Territory, and also of a violation of that part of his official oath as such attorney by which he was sworn to conduct himself with fidelity to the court: It is therefore

Ordered, That the said David A. Secombe be and he hereby is removed from his office as an attorney and counsellor of this

court, and of the several District Courts of this Territory, and that he be henceforth forbidden and prohibited from practising as such attorney in any of said courts. It is further

Ordered, That the clerk of this court deliver to said David A. Secombe a copy of this order.

A true record. Attest: GEORGE W. PRESCOTT, *Clerk.*

I, George W. Prescott, clerk of the Supreme Court in and for the Territory of Minnesota, certify the foregoing to be a true and complete copy of the order of court made and entered of record as above set forth on said 5th day of said February, A. D. 1856; and I further certify, that the above and foregoing is the whole and entire record in any way or manner relating to the said order of court at the said term or at any other term; and that the said order was made and entered of record in the following and no other manner, to wit: On the said day, the said David A. Secombe not being present in court, as the said judges rose to leave the court room after having fixed the adjournment day for holding said court, one of the said judges delivered to the undersigned clerk the said order in writing, directing the same to be entered of record as the order of said court, and the said court was thereupon immediately adjourned to the 15th day of July then next. And no further or other order whatever in relation to the subject matter of the said order was made at the said term.

In testimony whereof, I have hereunto set my hand
[SEAL.] and affixed the seal of said court, at St. Paul, this 7th day of May, A. D. 1856.

GEORGE W. PRESCOTT, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES *ex relatione* DAVID A. SECOMBE *v.* THE JUDGES OF THE SUPREME COURT OF MINNESOTA TERRITORY.

To the Judges of the Supreme Court of the Territory of Minnesota:

Please to take notice, that I shall move the Supreme Court of the United States, on Friday of the first week of the next term thereof, to be held at the Capitol in the city of Washington, in the District of Columbia, on the first Monday of December next, at the going in of the court, or as soon thereafter as counsel can be heard, for a rule, or order, upon the judges of the Territory of Minnesota, requiring them to vacate, annul, an order made by that court on the 5th day of February, 1856, removing David A. Secombe from his office as attorney and counsellor of said court and of the District Courts of said Territory, or show cause before the said Su-

preme Court of the United States why a writ of mandamus should not be issued to compel the said judges so to do.

And the said motion will be made upon the petition of the said David A. Secombe, hereto annexed. C. CUSHING,

Dated May 30, 1856. *Attorney for Petitioner.*

The case was argued by *Mr. Badger* in support of the motion.

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

A mandamus has been moved for, by David A. Secombe, to be directed to the judges of the Supreme Court of the Territory of Minnesota, commanding them to vacate and set aside an order of the court, passed at January term, 1856, whereby the said Secombe was removed from his office as an attorney and counsellor of that court.

In the case of Tillinghast *v.* Conkling, which came before this court at January term, 1829, a similar motion was overruled by this court. The case is not reported; but a brief written opinion remains on the files of the court, in which the court says that the motion is overruled, upon the ground that it had not jurisdiction in the case.

The removal of the attorney and counsellor, in that case, took place in a District Court of the United States, exercising the powers of a Circuit Court; and, in a court of that character, the relations between the court and the attorneys and counsellors who practise in it, and their respective rights and duties, are regulated by the common law. And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself.

It has, however, been urged at the bar, that a much broader discretionary power is exercised in courts acting upon the rules of the common law than can be lawfully exercised in the Territorial court of Minnesota; because the Legislature of the Territory has, by statute, prescribed the conditions upon which a person may entitle himself to admission as an attor-

ney and counsellor in its courts, and also enumerated the offences for which he may be removed, and prescribed the mode of proceeding against him. And the relator complains that it appears by the transcript from the record, and the certificate of the clerk, which he filed with his petition for a mandamus, that in the sentence of removal he is not found guilty of any specific offence which would, under the statute of the Territory, justify his removal, and had no notice of any charge against him, and no opportunity of being heard in his defence.

It is true that, in the statutes of Minnesota, rules are prescribed for the admission of attorneys and counsellors, and also for their removal. But it will appear, upon examination, that, in describing some of the offences for which they may be removed, the statute has done but little, if anything, more than enact the general rules upon which the courts of common law have always acted; and have not, in any material degree, narrowed the discretion they exercised. Indeed, it is difficult, if not impossible, to enumerate and define, with legal precision, every offence for which an attorney or counsellor ought to be removed. And the Legislature, for the most part, can only prescribe general rules and principles to be carried into execution by the court with judicial discretion and justice as cases may arise.

The revised code of Minnesota, (ch. 93, sec. 7, subdivision 2,) makes it the duty of the attorney and counsellor "to maintain the respect due to courts of justice and judicial officers."

The 19th section of the same chapter enumerates certain offences for which an attorney or counsellor may be removed; and, among others, enacts that he may be removed for a wilful violation of any of the provisions of section 7, above mentioned. And, in its sentence of removal, the court say that the relator, being one of the attorneys and counsellors of the court, had, by his acts as such, in open court, at the term at which he was removed, been guilty of a wilful violation of the provision above mentioned, and also of a violation of that part of his official oath by which he was sworn to conduct himself with fidelity to the court.

The statute, it will be observed, does not attempt to specify the acts which shall be deemed disrespectful to the court or the judicial officers. It must therefore rest with the court to determine what acts amount to a violation of this provision; and this is a judicial power vested in the court by the Legislature. The removal of the relator, therefore, for the cause above mentioned, was the act of a court done in the exercise of a judicial discretion which the law authorized and required

it to exercise. And the other cause assigned for the removal stands on the same ground.

It is not necessary to inquire whether this decision of the Territorial court can be reviewed here in any other form of proceeding. But the court are of opinion that he is not entitled to a remedy by mandamus. Undoubtedly the judgment of an inferior court may be reversed in a superior one which possesses appellate power over it, and a mandate be issued, commanding it to carry into execution the judgment of the appellate tribunal. But it cannot be reviewed and reversed in this form of proceeding, however erroneous it may be or supposed to be. And we are not aware of any case where a mandamus has issued to an inferior tribunal, commanding it to reverse or annul its decision, where the decision was in its nature a judicial act, and within the scope of its jurisdiction and discretion.

These principles apply with equal force to the proceedings adopted by the court in making the removal.

The statute of Minnesota, under which the court acted, directs that the proceedings to remove an attorney or counsellor must be taken by the court, on its own motion, for matter within its knowledge; or may be taken on the information of another. And, in the latter case, it requires that the information should be in writing, and notice be given to the party, and a day given to him to answer and deny the sufficiency of the accusation, or deny its truth.

In this case, it appears that the offences charged were committed in open court, and the proceedings to remove the relator were taken by the court upon its own motion. And it appears by his affidavit that he had no notice that the court intended to proceed against him; had no opportunity of being heard in his defence, and did not know that he was dismissed from the bar until the term was closed, and the court had adjourned to the next term.

Now, in proceeding to remove the relator, the court was necessarily called on to decide whether, in a case where the offence was committed in open court, and the proceeding was had by the court on its own motion, the statute of Minnesota required that notice should be given to the party, and an opportunity afforded him to be heard in his defence. The court, it seems, were of opinion that no notice was necessary, and proceeded without it; and, whether this decision was erroneous or not, yet it was made in the exercise of judicial authority, where the subject-matter was within their jurisdiction, and it cannot therefore be revised and annulled in this form of proceeding.

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,