Kentucky by a writ of error issued under the 25th section of the judiciary act.

A motion was made to dismiss the writ, upon the ground stated in the opinion of the court.

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

The writ of error in this case was issued on the 27th day of December last, and made returnable on the third Monday in January, and the defendant in error cited to appear on that day.

It has already been decided at the present term, in the case of Insurance Co. of the Valley of Virginia *v.* Mordecai, that such a writ of error cannot be supported, and does not bring the case before the court.

A motion has been made, on behalf of the plaintiff in error, to remand the case to the court below, with leave to amend the writ of error and citation. But, as the transcript stands, there is no case before us in which we can exercise a power of amendment. We can do nothing more than dismiss it for want of jurisdiction.

But if the plaintiff desires it, he may, in order to save expense, withdraw the transcript, and use it in connection with the proper and legal process to bring the case here; and if withdrawn, a receipt for it must be left with the clerk.

But as it now stands, it must be dismissed for want of jurisdiction.

FRANCIS MARTIN, ADMINISTRATOR OF DENNIS T. DONOVAN, DECEASED, PLAINTIFF IN ERROR, *v.* CHRISTIAN IMHSEN.

In Pennsylvania, where a transfer of certain accounts was made, the assignee had only an equitable interest, and could not sue in his own name. But when the suit was brought in Louisiana, where there is no distinction between a legal and equitable title, he could maintain the suit in his own name, and the assignment was good evidence.

An exception taken to the refusal of a judge to sign a bill of exceptions, under the circumstances of this case, requires no further notice.

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The ruling of the court below, viz: that prescription was interrupted by a litigation which was pending between the parties shortly before the present suit was instituted, was, under the circumstances of the case, correct.

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

The case is explained in the opinion of the court.

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

Mr. Justice GRIER delivered the opinion of the court.

Donovan was defendant below in an action for a balance of accounts claimed as due by him to the firm of Owen & Ihmsen. This claim had been transferred by that firm to one Frederic Lorenz, and, after his death, transferred to Ihmsen, the plaintiff below.

The cause was tried, by consent of parties, without the intervention of a jury; consequently, the exceptions to the admission of testimony are irregular, and need not be particularly noticed. Besides, we can see no good ground of objection to the evidence of confessions and admissions of a party, consisting of accounts rendered in a former controversy on the same subject, before arbitrators. The award itself was not received by the court as evidence of the amount of debt due, because it had been set aside for some irregularity.

The objections to the admission of the paper showing the transfers of the account were equally without foundation. By the law of Pennsylvania, where these transfers were made, Ihmsen would have an equitable interest in the account; but in that State the mere equitable assignee of an account would not sue in his own name, such *chose in action* not being assignable at common law. There the suit would have been brought in the name of Owen & Ihmsen, the original creditors, for the use of Lorenz, Ihmsen, or any other person holding the equitable right to the account. But in Louisiana, where, by the rule of the civil law, there is no such distinction between the legal and equitable title, Ihmsen, as equitable owner, could

sustain the suit in his own name, and the assignments admitted to prove his title were properly received.

This case was tried at April term, 1856. The president judge has reported his finding of the facts, and his judgment thereon. Some six months afterward, the defendants below made up a statement of facts, (to which the plaintiff refused his assent,) and presented it to the district judge, and demanded that he should seal a bill of exceptions. This the judge properly refused to do, but signed a bill of exceptions taken to his decision refusing to sign one. This novelty in practice requires no further notice.

The only question of law arising on the facts of this case as reported by the court was on the plea of prescription. On this point, the court gave their opinion as follows:

"Without considering the questions whether the account in this case is an open account, within the meaning of the statute of Louisiana, or whether the statute operates upon demands that were subsisting at its date, our conclusion is, that the proceedings in the fourth District Court, relative to the award, were an interruption of that prescription. There was a suit pending between the parties, the present defendant being the plaintiff, which embraced a portion of the matter of this controversy. It was competent to the defendants, by instituting a demand in reconvention, to bring up the whole of the controversy for a settlement in that suit; and if that had been done, a legal interruption would have resulted within the 3484th, 3485th sections of the civil code. (Dreggs *v.* Morgan, 10 Rob., 120.) This was not formally done on the record, but the parties did, by consent, that which we are bound to consider as having an equivalent value.

"They came to an agreement that arbitrators selected by them should have the power to decide who was the creditor of the contesting parties, to settle finally ('without appeal') the amount due on either part, and that the attorney of either party might move for judgment on this award. It is clear, that had the arbitrators proceeded regularly, and a judgment been rendered upon it, that no exception could have been taken to the condition of the pleadings in the pending suit, or that there

nad not been a demand in reconvention. The consent in the submission agreement implied a waiver of all pleadings of that nature, and was a release of all errors in the preliminary stages of the suit. Donovan appeared in the District Court, and successfully resisted a motion for judgment upon the award rendered. But the code does not require that a suit should be successfully prosecuted to operate as an interruption of prescription. (Trop. de Pres., sec. 561; Dunn *v.* Kinney, 11 Rob., 247; Baden *v.* Baden, 4 Ann., 468.")

We see no error in this statement of the law, and consequently affirm the judgment with costs.

LESLIE COMBS, COMPLAINANT AND APPELLANT, *v.* JOHN L. HODGE, ADMINISTRATOR OF ANDREW HODGE, DECEASED, WILLIAM L. HODGE, AND JAMES LOVE.

The pleadings in another suit, where the parties were different, and the petition and answer signed by counsel, cannot be resorted to for admissions of the respective parties.

Where certificates of the public debt of Texas were transferable only by the owner, or his legal representative or attorney, and there is no sufficient evidence of the existence of a power of attorney, a mere endorsement in blank by the owner is not sufficient to justify a purchaser in drawing a conclusion that the holder is entitled to sell or discount it.

The difference between this and negotiable instruments explained, and the authorities examined.

But as the circumstances attending the purchase are not well disclosed in the record, the court will remand the case to the Circuit Court, with directions to allow the parties to amend the pleadings, and to take testimony, if they should be so advised.

THIS was an appeal from the Circuit Court of the United States for the District of Columbia.

The chronological history of the case was this:

In 1839, Combs was the proprietor of a large amount of bonds issued by the State of Texas for various sums, which certificates concluded in this way:

"This certificate is transferable by the said Leslie Combs,