VERDEN *vs.* COLEMAN.

1. A patent was granted to a pre-emptor in 1841 for a tract of land which had been previously assigned, by the direction of the President, to a Pottawatomie Indian, under the terms of the treaty with that tribe. The patent was adjudged to be a valid grant of land by the Supreme Court of Indiana: *Held*, that this case is not within the clause of the 25th section of the judiciary act, which confers jurisdiction upon this court to re-examine judgments or decrees of State courts adverse to " an authority exercised under the United States."

2. The fact that the title set up for the Indian in this case is under a treaty, does not avail to give this court jurisdiction, because neither the Indian himself nor any one claiming through him is party to the suit.

Writ of error to the Supreme Court of Indiana.

Coleman filed a bill in equity against Verden in the Benton county circuit, Indiana, to foreclose a mortgage. The complainant set out a note given by Verden to him for $2,315, and a mortgage on six pieces of land to secure its payment, and prayed a decree of foreclosure. The defendant, in his answer, admitted the making of the note and the execution of the mortgage; and set up, by way of avoidance, the following facts: That he purchased, at the time the note and mortgage were given, six pieces of land, five from the complainant and one from Samuel Coleman, for the gross sum of $4,315, of which he paid down $2,000, and gave the note and mortgage to secure the balance, $2,315. The whole six lots were included in the mortgage, and the whole constituted one transaction. But the defendant alleged, that for one of the six lots, the value of which alone was greater than the sum specified as due on the note and mortgage, he had got a worthless title. The title which he got rested upon a patent given to one Hewett in 1841, as a pre-emptor. He alleged that the land patented to Hewett had been reserved by the treaty of 1832 with the Pottawatomie Indians, to one To-pen-na-be, a member of the tribe, and that previous to the date of Hewett's pre-emption title the President of the United States had selected

and located the tract in question and assigned it to the Indian
to whom it legally belonged at the date of the patent.   The
defendant set out the documents upon which To-pen-na-be's
title rested.   In reply, the complainant insisted that Hewett
acquired the legal title as pre-emptor, and that To-pen-na-be
acquired none by the treaty and the proceedings had under it.
He set out the documents upon which the Hewett title rested.
The defendant demurred to the replication, but the demurrer
was overruled and a decree of foreclosure entered.   He ap-
pealed to the Supreme Court of the State, where the decree
was affirmed.   He, thereupon, removed the cause to the Su-
preme Court of the United States by a writ of error under the
25th section of the judiciary act.

   Mr. Gillet, of Washington city, and *Mr. Mace*, of Indiana,
for plaintiff in error.

   Mr. Baird, of Indiana, for defendant in error.

   Mr. Justice GRIER.   Does this case come within the 25th
section of the judiciary act?
   The bill filed in the State court is for the foreclosure of a
mortgage.. The defence set up by the mortgagor was, that the
consideration of the note which the mortgage secured was the
purchase money of the land mortgaged; that the title to one
of the tracts was through a patent of the United States to Han-
namah Hewett; that this patent did not convey a good title,
because in 1832 the United States concluded a treaty of pur-
chase of a large tract of country with the Pottawatomie In-
dians; that by the terms of this treaty a section was reserved
for an Indian named To-pen-na-be, to be located under direc-
tion of the President; that before the date of the patent to
Hewett for this quarter section the whole section, including it,
had been assigned to To-pen-na-be.
   The patent was, nevertheless, granted to Hewett because of
a prior equity by settlement.
   The Supreme Court of Indiana decided that the patent to
Hewett was a valid grant of the land   This decision will not

bring the case within the 25th section. Nor can we claim it because of the title set up under the treaty with the Indians, because neither To-pen-na-be nor any one claiming under him is party to the suit.

This court has decided in the cases of *Owings* vs. *Norwood*, (5 Cranch, 344,) and of *Henderson* vs. *Tennessee*, (10 How., 311,) that "in order to give jurisdiction to this court the party must claim the title under the treaty for himself, and not for a third person, in whose title he has no interest."

This case is, therefore, dismissed for want of jurisdiction.

FRANKLIN BRANCH BANK *vs.* THE STATE OF OHIO.

The sixtieth section of the act of the Ohio Legislature incorporating the State Bank contains a contract for a fixed rule of taxation upon that bank and its branches, and a subsequent act, which attempts to assess a larger tax by a different rule is unconstitutional.

Writ of error to the Supreme Court of Ohio. The State of Ohio, by Mr. Walcott, her Attorney General, brought suit in the Supreme Court of Franklin county against the Franklin Branch of the State Bank of Ohio, claiming the sum of $4,076 30, as due from the bank to the State for taxes assessed pursuant to an act of the Legislature, passed 5th April, 1859. The bank pleaded that the 60th section of the charter was a contract, by which the State bound herself to levy no other or greater taxes on the State Bank or its branches than what are stipulated for in that section, and that the act of 1859, under which the taxes claimed in this case are assessed, is void, as being a violation of the contract. The plaintiff demurred. The court gave judgment against the defendant for the sum claimed. The defendant took the case into the Supreme Court of the State, where the judgment of the county court was affirmed. There upon the bank took this writ of error.

Mr. Stanbery, of Ohio, for the plaintiff in error.