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decree in the case. After the assets are all collected by the Receiver, so that the Master may ascertain the amount to be distributed, the question now proposed will be properly raised, and decided on exceptions to the Master's report. That report should state the amount of assets to be distributed, the amount collected from the original defendants, also the *other amounts* collected by the Receiver from persons not in the decree; whether the amounts collected from the parties respondent are sufficient to pay each of the original parties complainant? if not, how much to each; how much other assets have been collected by the receiver, and how much would be coming to each creditor on the hypothesis that all the assets are to be divided among all the creditors equally.

With these facts ascertained, the Court will be in a condition to make a final decree, which can be reviewed by this Court but not till then.

The appeal is therefore premature, and must be dismissed.

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1. Real estate being sold under a regular proceeding of the Circuit Court, an order of the same Court awarding process to put the purchaser in possession, is not a decree from which the tenant can appeal to this Court.
2. If the tenant had an agreement with the purchaser, which gave him the right to remain in possession, his remedy was a bill for an injunction, in which a final decree could be passed and an appeal legally taken.
3. The order of a Judge allowing an appeal, so far from being conclusive upon the Court, does not even imply that the Judge himself, has a settled opinion concerning the appellant's right.

Appeal from the Circuit Court of the United States for the District of Columbia.

The record brought up by this appeal showed that in 1862 a

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cause was pending in the Circuit Court for the District of Columbia designated as *Statham et al. vs. Callan et al.* In that cause the Court made certain decrees and decretal orders in pursuance of which a sale was made by trustees of some real property in the City of Washington. The purchaser at the first sale made by the trustees was J. J. Waring, whose contract was annulled by his failure to comply with the terms of it. Another sale was then regularly made under the order of the Court to Austin Sherman, who assigned his right to John Frederick May, and May having fully complied with the terms of the sale, a final order ratifying and confirming it was made by the Court. May being by virtue of these proceedings the owner of the property in question, found John F. Callan in possession. Callan refused to go out, alleging that he was there under an agreement made between himself and Waring, the purchaser at the first sale, who had made default. He asserted also that May had confirmed this agreement of Waring, and made it binding upon himself by accepting the note which was due under it. May then presented his petition to the Court, setting forth the facts and praying for process to put him in possession. Callan answered the petition. The Court found that May was entitled to possession, and awarded him a writ of *habere facias possessionem*. Callan petitioned for an appeal to the Supreme Court. The appeal was allowed on special allocatur, by Mr. Justice Wayne, and the record brought up. May moved to dismiss on the ground that no appeal would lie from such an order as that made in his favor by the Circuit Court.

Mr. Carlisle, of Washington City, and *Mr. May*, of Maryland, for the motion.

Mr. Coxe, of Washington City, *contra*.

Mr. Chief Justice TANEY. This appeal must be dismissed. The application of May for process to obtain possession of the land was not a suit in which any final decree could be passed so as to give to either party a right to appeal. The proceedings in

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the Circuit Court after its decree was affirmed in the case of *Statham, Smithson & Co. vs. Callan, et al.*, were nothing more than proceedings required to carry into execution that decree. And when May had become the purchaser, and the sale was ratified by the Court, and he had complied with the conditions of the sale, he was entitled, as a matter of course, to the process of the Court to put him in possession. The order of the Court directing process to issue is not such a final order or decree in a case as the Act of 1789 contemplates. It is nothing more than an order of process to carry into execution a final decree already passed in a case in which May was not a party.

If there was any agreement between May and Callan, after May became the purchaser, whereby the land was leased to Callan for a term which is not yet expired, the remedy of Callan was by a bill in Equity setting out the agreement, and praying that May might be enjoined from disturbing him in his possession. This would have been a new case in which a final decree might have been passed and an appeal legally taken. But such an agreement can furnish no ground for appeal from an order of the Circuit Court carrying into execution the mandate of this Court in the case of *Statham, Smithson & Co. vs. Callan et al.*, in which May was not a party and had no concern.

It seems to be supposed by counsel in the argument that the order of the Judge of this Court allowing the appeal was conclusive, and that its validity was not now open to dispute. But the allocatur of a Judge was never so considered. Writs of error to State Courts cannot issue without the allocatur of a Judge of this Court. Yet there is hardly a term in which a case of that description has not been dismissed upon the ground that the transcript did not show a case in which a writ of error would lie. A contrary doctrine would be exceedingly inconvenient if it could be maintained, and would throw upon a single Judge the responsibility which properly belongs to the Court. And it does not by any means follow that the Judge who authorizes the appeal has made up his own mind that the party is legally entitled to it. He may, and no doubt often does, entertain doubts upon the subject, or may regard the point as new

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and undecided, and upon which different opinions may be entertained, and in such cases he grants the appeal in order to bring the matter before the Court and enable it to decide for itself whether the case is or is not within their appellate jurisdiction as regulated by the Act of Congress. The allocatur of a single Judge certainly cannot enlarge the appellate powers of this Court beyond the limits prescribed by law, and that law does not authorize an appeal from an order directing execution to issue to enforce a judgment.

This appeal must therefore be dismissed.

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A question repeatedly argued and decided must be considered as no longer open for discussion, whatever differences of opinion may once have existed on the subject in this Court.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

This case was submitted to the Court upon the record, without any argument, written or oral.

Mr. Justice SWAYNE. This is a suit in equity, brought here by appeal from the Circuit Court of the United States for the Northern District of Ohio.

The questions presented are, whether the 60th section of the Act of the Legislature of Ohio, entitled "An Act to incorporate the State Bank of Ohio and other Banking Companies," passed February 24th, 1845, constitutes a contract upon the subject of taxation, which is binding upon the State; and, if so, whether that contract is impaired by the subsequent Act of the Legislature, passed April 5th, 1859, entitled "An Act for the assessment and taxation of all the property in this State, and for levying taxes thereon according to its true value in money."

These questions came before this Court the first time in the *Piqua Branch of the State Bank of Ohio vs. Knoop*, (16 How.,