On examining the act "concerning the district of Columbia," the court is of opinion, that the appellate jurisdiction, granted by that act, is confined to civil cases. The words "matter in dispute," seem appropriated to civil cases, where the subject in contest has *a value beyond the sum mentioned in the act. But in criminal cases, the question is the guilt or innocence of the accused. And although he may be fined upwards of $100, yet that is, in the eye of the law, a punishment for the offence committed, and not the particular object of the suit. [*174

The writ of error, therefore, is to be dismissed, this court having no jurisdiction of the case.(a)

Faw *v.* Roberdeau's Executor.

Statute of limitations.

If an act of limitations have a clause "saving to all persons *non compos mentis*, *femes covert*, infants imprisoned, or out of the commonwealth, three years after their several disabilities removed," a creditor, resident of another state, removes his disability by coming into the commonwealth, even for temporary purposes; provided, the debtor be at that time within the commonwealth.[2]

This was an action in the Circuit Court of the district of Columbia, for the county of Alexandria: and the question arose upon the construction of the act of assembly of Virginia, for "reducing into one the several acts concerning wills," &c. (Rev. Code, p. 169, c. 92, § 56), which is in these words, viz.: "If any suit shall be brought against any executor or administrator, for the recovery of a debt due upon an open account, it shall be the duty of the court, before whom such suit shall be brought, to cause to be expunged from such account, every item thereof which shall appear to have been due five years before the death of the testator or intestate. Saving to all persons *non compos mentis*, *femes covert*, infants, imprisoned, or out of this commonwealth, who may be plaintiffs in such suits, three years after their several disabilities removed."

The declaration was for plank, scantling and foundation-stone, lent by the plaintiff to the defendant; *for the like materials, sold and delivered; and for money had and received. The defendant pleaded the general issue, and a verdict was taken for the plaintiff, subject to the opinion of the court, upon the following facts: [*175

"That the debt found by the verdict was due by the defendant's testator to the plaintiff, in the year 1786. That the testator died in 1794. The plaintiff was a resident of, and in, the state of Maryland, and out of the commonwealth of Virginia, when the articles were delivered for which the suit was brought, and when the debt was contracted; and continued so, in Maryland, and out of the said commonwealth, until the month of June 1795, when he removed to Alexandria to live, and hath lived there ever since. That in the year 1786, after the cause of action accrued, the plaintiff passed through the

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(a) See the case of United States *v.* La Vengeance, 3 Dall. 297, where it seems to be admitted, that in criminal cases, the judgment of the inferior court is final.[1]

[1] And see Ex parte Kearney, 7 Wheat. 38; Ex parte Watkins, 3 Pet. 193; s. c. 7 Id. 574.

[2] See Bond *v.* Jay, 7 Cr. 350; Chomqua *v.* Mason, 1 Gallis. 342; Dorr *v.* Swartwout, 1 Bl. C. C. 179; Richardson *v.* Curtis, 3 Id. 385; Thurston *v.* Fisher, 9 S. & R. 288.

town of Alexandria, and was for a short time therein, but not as a resident thereof."

Upon this statement of facts, the judgment of the court below was for the defendant; and the plaintiff brought the present writ of error.

E. J. Lee, for the plaintiff in error.—The plaintiff was not a citizen of Virginia, when the debt was contracted. It does not appear, that he did not commence his action within the limited time after his becoming a citizen.

WASHINGTON, J.—Does it not appear, that Faw was in Virginia, after the cause of action accrued?

E. J. Lee.—Only as a traveller. It does not appear, that the testator lived in Virginia at that time. The plaintiff had three years to bring his action, after removal into Virginia. The writ is no part of the record, unless made so by a bill of exceptions, and it is not stated, when the action was brought.

Swann, contrà.—The act of limitation begins to run from the time the plaintiff passed through Alexandria, after the cause of action had accrued. *176] His disability *(according to the expression of the act of assembly) was then removed, and he ought to have brought his action, within three years from that time.

The plaintiff came to reside in Alexandria, in 1795. The suit was tried in 1802; hence, the presumption is, that it was commenced at that time, and the plaintiff can only show the contrary, by producing his writ.

The state of the case negatives the idea of a loan. The claim, therefore, was upon the open account, and the court had a right to expunge all the articles charged five years before the death of the testator.

MARSHALL, Ch. J.—That act has nothing to do with the lapse of time, after the death of the testator. The five years are before his death. The three years are also three years, during the life of the testator, and the plaintiff must, therefore, have been in the state three years, during the life of Roberdeau, to make the limitation attach to his claim. The court will hear you upon that point, if you think this opinion not correct.

Swann said, that no objection occurred to him at present.

MARSHALL, Ch. J.—The court is satisfied with that opinion, unless you can gainsay it.

WASHINGTON, J.—There is another point. Did not the plaintiff's coming into the state, in 1786, after the cause of action accrued, cause the limitation to attach?

Swann.—The words of the act are, "saving to persons out of this commonwealth," not persons residing out of this commonwealth. Being "out of the commonwealth" is the disability; coming into the commonwealth, therefore, is a removal of that disability. If the saving had been to persons residing out, &c., then, possibly, a mere coming in, without residing, would not have been a removal of the disability. *Strithorst* v. *Græme*, 3 Wils. 145.

*E. J. Lee.—Under the British stat. of 1 Jac. I., c. 16, § 3, the plaintiff must have been a resident in England; and he then has six years, after his return. Here, the plaintiff was not a resident of Virginia, at any time during the life of the testator. *Perry* v. *Jackson*, 4 T. R. 516.

Marshall, Ch. J.—Beyond sea, and out of the state, are analogous expressions, and are to have the same construction. The whole case turns upon the question, whether the plaintiff's being in the state, in 1786, after the cause of action had accrued, takes him out of the saving clause?(*a*)

E. J. Lee.—The casual coming into the state is not within the meaning of the act. It means the coming in to reside. The "act for the limitation of actions," &c. (Revised Code, p. 116, § 13), speaks of persons residing beyond seas, or out of the country. If, in such case, the plaintiff has a factor in this country, the statute runs against him; but if no factor, then it does not. Suppose, the plaintiffs should be foreign partners, and one of them should be driven, by stress of weather, into a remote part of the state, he may be ignorant of the place of residence of his debtor. Shall the plaintiffs, in such case, be barred by the act of limitation? The case in 2 W. Bl. 723, turned upon the question of residence. I can find no positive authority. I believe the point has never been expressly decided.

March 2d, 1805. Marshall, Ch. J., after stating the case, delivered the opinion of the court.—There being a general verdict for the plaintiff, it is necessary, in order to justify a judgment for the defendant, that the statement of facts, upon which he relies, should contain all the circumstances necessary *to support such a judgment; otherwise, the judgment must be rendered upon the verdict for the plaintiff. [*178

The five years mentioned in the 56th section of the act of assembly, must have elapsed, before the death of the testator. If they did not, no lapse of time, after his death, can bring the case within the purview of this act. In the present case, the five years had elapsed. But there is a saving clause, in the following words, "saving to all persons *non compos mentis*, *femes covert*, infants, imprisoned, or out of this commonwealth, who may be plaintiffs in such suits, three years after their several disabilities removed." It is one of the facts stated, that the plaintiff was within the commonwealth of Virginia, in the year 1786, after the cause of action accrued: and hence, it is argued, that he is not within the saving clause of the section, and that, to exclude him from the benefit of that clause, it is not necessary, that he should have become a resident of that state.

The court has not been able to find any case in which this question has been decided. We are, therefore, obliged to form an opinion from a consideration of the act itself. The words of the act are, "out of this commonwealth," and such persons may bring their actions within three years after their "disability" removed. The court is of opinion, that the disability is removed, at the moment when the person comes into the commonwealth; and he must bring his action within three years from that time.

(*a*) See the case of Durouré *v.* Jones, 4 T. R. 300, which seems decisive as to that point.

But something further than this was necessary, to authorize a judgment for the defendant. It ought to have appeared, that Roberdeau was a resident of the state of Virginia, at the time the plaintiff came into that state in 1786; and that fact is not in the case stated. The judgment, therefore, ought to have been for the plaintiff, and not for the defendant. Judgment reversed, with costs, and judgment entered for the plaintiff on the verdict.

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*179] *Ray *v.* Law.

Appeal.—Final decree.

A decree for a sale of mortgaged property, upon a bill to foreclose, is a final decree, from which an appeal will lie.[1]

Law having a mortgage on real estate in the city of Washington, and Ray having a subsequent mortgage on the same estate, Law had filed his bill in chancery in the Circuit Court of the district of Columbia, for a foreclosure and sale of the mortgaged property, and made Ray a defendant. The bill having been taken for confessed against Ray, a decree was obtained by Law for a sale. The sale had been made under the decree, and notice given, that on a certain day, the sale would be ratified, unless cause was shown. On that day, Ray appeared, but not showing good cause, in the opinion of the court, the sale was confirmed. Ray prayed an appeal to this court, on the decree for the sale, which the court refused, on the ground, as it is understood, that the decree for the sale was not a final decree in the cause.

Ray, on this day, presented a petition to this court, setting forth those facts, among others, praying relief, and that this court would direct the court below to send up the record. At the same time, he produced sundry papers, purporting to be the substance of that record, but not properly authenticated.

Marshall, Ch. J.—The act of congress points out the mode in which we are to exercise our appellate jurisdiction, and only authorizes an appeal or writ of error on a final judgment or decree.

C. Lee, for the petitioner, contended, that this was a final decree as to Ray, and cited 2 Fowler's Exchequer Practice 195, to show that such a decree would, in England, be considered such a final decree as would authorize an appeal.

March 5th, 1805. Marshall, Ch. J.—We can do nothing, without seeing the record, and the papers offered cannot be considered by us as a record.

*180] *The court, however, is of opinion, that a decree for a sale under a mortgage, is such a final decree as may be appealed from. We suppose, that when the court below understands that to be our opinion, it will allow an appeal, if it be a case to which this opinion applies.

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[1] Whiting *v.* United States Bank, 13 Pet. 6; Bronson *v.* La Crosse and Milwaukee Railroad Co., 2 Black 524. And see French *v.* Shoemaker, 12 Wall. 86.