Mr. Justice STRONG delivered the opinion of the court.

The contract in these cases was for the payment or delivery of a specified weight of pure gold, solvable in coined money. They are, therefore, governed by the decisions heretofore made by this court in *Bronson* v. *Rodes*, and *Butler* v. *Horwitz*. It follows that the judgments entered in the Superior Court were erroneous. They should have been entered for coined dollars and parts of dollars, instead of treasury notes equivalent in market value to the value in coined money of the stipulated weight of pure gold.

JUDGMENT in each case REVERSED, and the causes remanded with instructions to enter judgment in accordance with the

FOREGOING OPINION.

RANKIN *v.* THE STATE.

Where, on an indictment for a capital offence, the Supreme Court of a State reverses a judgment of a court below, under such circumstances as that the case must go back for trial on its merits, the judgment is not a "final judgment," and therefore is not capable of being brought here under the 25th section of the Judiciary Act.

IN error to the Supreme Court of Tennessee; the case being this:

An indictment had been found in one of the State courts of Tennessee, at August Term, 1865, against a certain Rankin, and ten other persons named in the indictment, charging them with the murder of one Thornhill, on the first of June preceding. The defendant, in August Term, 1866, pleaded that on the day mentioned in the indictment he was in the military service of the United States, in the military district of East Tennessee, being first lieutenant of company B of the 9th Tennessee Cavalry, and bound to obey all lawful orders of his superiors, "then and there existing and being an insurrection and civil war in said military district;" and that on the 5th day of October thereafter he was ar-

raigned and put on trial at Chattanooga, before a general court-martial, for the same identical crime with which he was charged by the indictment, and was acquitted thereof; and he set forth the record and proceedings of the court-martial. To this plea the attorney-general filed a replication, denying the existence of the record, and the continuance of the war, and alleging fraud in the procurement of the trial by court-martial. The defendant demurred, and the court sustained the demurrer. The attorney-general then filed a new replication, the case was tried, and the defendant was acquitted. Writ of error being brought, the Supreme Court of the State reversed the decree of acquittal, on the ground that the defendant's plea was insufficient, and remanded the case to the Circuit Court for trial. The effect of this judgment was to overrule the defendant's plea, and to require him to plead over to the indictment.

The case was now brought here by Rankin, under the 25th section of the Judiciary Act, which gives a writ of error to this court from the highest court of the State on "*final* judgments," in certain cases, specified in the section.

Messrs. H. Maynard, and R. M. Barton, for the plaintiff in error.

No opposing counsel.

Mr. Justice BRADLEY delivered the opinion of the court.

The difficulty with the case, as brought before us, is that the judgment was not a final one in the case. This court, under the 25th section of the Judiciary Act, can only take cognizance of final judgments of the State courts. And although the court has been liberal in its construction of the statute as to what judgments are final, yet the judgment in this case cannot be deemed such by any reasonable stretch of construction. It is a rule in criminal law *in favorem vitæ*, in capital cases, that when a special plea in bar is found against the prisoner, either upon issue tried by a jury, or upon a point of law decided by the court, he shall not be concluded or

convicted thereon, but shall have judgment of *respondeat ouster*, and may plead over to the felony the general issue, not guilty.* And this is the effect of the judgment of reversal rendered by the Supreme Court of Tennessee in this case; so that in no sense can that judgment be deemed a final one. The case must go back and be tried upon its merits, and final judgment must be rendered before this court can take jurisdiction. If after that it should be brought here for review, we can then examine the defendant's plea and decide upon its sufficiency.

WRIT OF ERROR DISMISSED.

EDMONDSON *v.* BLOOMSHIRE.

A clause in the will of a woman who died in 1803—"My certificates that are in the hands of my brother Ben, I desire may be given to my husband, to dispose of as he may think proper"—held not to include warrants for a large amount of bounty lands, though the words certificates and warrants, of the sort in question, were sometimes used synonymously; the same brother having had in his hands at the time of the making of the will some other instruments more properly called "certificates;" the testator having devised all the lands she possessed to her husband "during his life;" a settlement of her estate on the basis that the warrants did not pass as certificates, having been long acquiesced in by the party now complainant, and "evidence of the most satisfactory character having been introduced by the respondents, showing that the land warrant was never in the hands of the brother prior to the date of the will, or at any other time."

APPEAL from the Circuit Court for the Southern District of Ohio, in which court John Edmondson and Littleton Waddell in right of his wife Elizabeth, sister of the said John, filed a bill against Adam Bloomshire and others, to compel a conveyance of certain lands in Ohio, alleged to be in the possession of the defendants. The court below dismissed the bill, and the complainants appealed.

* 4 Blackstone's Commentaries, 338.