plication could work this effect. It contains an acknowledgment of the independence and sovereignty of the United States, in their political capacities, and a relinquishment on the part of his Britannic majesty, of all claim to the government, propriety and territorial rights of the same. These concessions amounted, no doubt, to a formal renunciation of all claim to the allegiance of the citizens of the United States. But the question who were *215] at that period citizens of the *United States is not decided, nor in the slightest degree alluded to, in this instrument; it was left necessarily to depend upon the laws of the respective states, who, in their sovereign capacities, had acted authoritatively upon the subject. It left all such persons in the situation it found them, neither making those citizens, who had by the laws of any of the states been declared aliens, nor releasing from their allegiance any who had become, and were claimed, as citizens. It repeals no laws of any of the states which were then in force and operating upon this subject, but on the contrary, it recognises their validity, by stipulating that congress should recommend to the states, the reconsideration of such of them as had worked confiscations. If the laws relating to this subject were, at that period, in the language of one of the counsel, temporary and *functi officio*, they certainly were not rendered so by the terms of the treaty, nor by the political situation of the two nations, in consequence of it A contrary doctrine is not only inconsistent with the sovereignties of the states, anterior to, and independent of, the treaty, but its indiscriminate adoption might be productive of more mischief than it is possible for us to foresee.

If, then, at the period of the treaty, the laws of New Jersey, which had made Daniel Coxe a subject of that state, were in full force, and were not repealed, or in any manner affected, by that instrument, if, by force of these laws, he was incapable of throwing off his allegiance to the state, and derived no right to do so, by virtue of the treaty, it follows, that he still retains the capacity which he possessed before the treaty, to take lands by descent in New Jersey, and consequently, that the lessor of the plaintiff is entitled to recover.

Judgment must be affirmed, with costs.

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*216] *The Brig Union *et al.*

United States *v.* The Brig Union, The Sloop Sally and cargo, and The Sloop Deborah and cargo.

Jurisdiction on appeal.

It is incumbent upon the plaintiff in error, to show that this court has jurisdiction of the case.
This court will permit *vivâ voce* testimony to be given of the value of the matter in dispute.
An appraisement made by order of the district judge, by three sworn appraisers, is not conclusive evidence of the value, but it is better evidence than the opinion of a single witness, examined *vivâ voce* in open court.
After deciding the question of value, upon the weight of the evidence, the court will not continue the cause, for the party to produce further evidence as to the value.

These were three separate libels against these three vessels, which were seized by the collector of the district of Delaware, for a supposed breach of

the revenue laws. The sentence of the court below being in favor of the claimants, the United States appealed.

Broom, for the appellees, objected to the jurisdiction of this court, because there was no rule to consolidate the cases, and in neither of them separately did the value of the thing in dispute, exclusive of costs, appear to be $2000.

Reed, United States attorney for the district of Delaware, said, it was incumbent on the claimants to show the value, as they had submitted to the jurisdiction below. But—

THE COURT said, that the plaintiff in error must show that this court has jurisdiction. The circuit court can neither give nor take away the juridiction of this court. This court must judge for itself of its own jurisdiction.

A witness was then introduced in behalf of the United States, who was sworn and examined *vivâ voce*, in open court, to prove the value.

Broom, for the appellees, read from the record an appraisement, made by three sworn appraisers, by order of the district judge, by which the brig Union was appraised at $1800, the sloop Sally, at $400, and the sloop Deborah, at $600, and contended, that this appraisement being made by order of the judge, was conclusive evidence of the value of the matter in dispute, although that appraisement was never acted upon, by the claimants *giving caution so as to liberate the vessels, which was the reason of [*217
the order for appraisement, according to the 89th section of the revenue law. (1 U. S. Stat. 695.) But if it should not be deemed conclusive evidence, yet it is better evidence than the opinion of a single witness, who now forms a judgment from his recollection of the vessels two years ago. It is the testimony of three persons who formed their judgment, at the time, from an actual view and examination of the property. It was returned to the court, and filed and entered upon record, without any objection on the part of the United States.

Rodney, Attorney-General, contrà.—If the court below cannot, by any act, oust this court of its jurisdiction, much less can any of its officers or appraisers. If this valuation be conclusive, it puts it in the power of appraisers appointed by the court below to deprive this court of its jurisdiction.

MARSHALL, Ch. J.—The appraisement is not conclusive evidence of the value, but in this case, it is the best evidence. It was made by officers of the court, under its order, and was regularly returned and filed. It does not impeach the credibility of the witness now examined, for the value is a matter depending upon opinion, and with respect to which the judgments of men may honestly vary. The appraised value would have been the matter in dispute, if the property had been delivered up to the claimants upon security given.

TODD, LIVINGSTON, WASHINGTON, CHASE, and CUSHING, Justices, concurred.

JOHNSON, J., contrà.—The appraisement was a thing not perfected. It was not acted upon, and might have been impeached.

The appeals were all dismissed for want of jurisdiction in this court.

*218] No objection was made to the *vivâ voce* examination of the witness as to the value. *On the next day—

Rodney, Attorney-General, moved the court for a continuance of these causes, and leave to take affidavits respecting the value of the property, so as to sustain the jurisdiction. This court has only decided that its jurisdiction does not appear upon the record. It is like the case of *Course* v. *Stead's Executors*, 4 Dall. 25, where the court continued the cause, and suffered affidavits to be taken, to show the value of the matter in dispute. If the court should be of opinion, that the decision of yesterday, upon the weight of testimony, differs this case from that of *Course* v. *Stead's Executors*, they will reject the motion.

Broom, contrà.—If this motion had been made yesterday, before the decision of the court upon the weight of testimony, perhaps, it might have been proper, but after the parties have put themselves on trial, upon the evidence then before the court, and the decision has been made, it is not usual to open the case, and grant a new trial, unless new evidence is suggested to have been discovered since the trial, not known to the party at the time of trial.

Marshall, Ch. J.—Cannot the United States sue out a new writ of error, and take new affidavits to show the cause to be within our jurisdiction? If so, perhaps, the court would not put the United States to that expense.

Rodney apprehended it would be final, it being an appeal, and not a writ of error.

The Court overruled the motion.

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*219] *Pawling and others *v.* United States.

Demurrer to evidence.—Delivery in escrow.

Upon a demurrer to evidence, the testimony is to be taken most strongly against him who demurs, and such conclusions as a jury might justifiably draw, the court ought to draw.[1]

A bond may be delivered as an escrow, by the surety, to the principal obligor.[2]

If one of the obligors, at the time of executing the bond, in the presence of some of the other obligors, say, "we acknowledge this instrument, but others are to sign it," this is evidence, from which the jury may infer a delivery as an escrow, by all the obligors who were then present.[3]

Error to the District Court for the district of Kentucky, in an action of debt, upon an official bond given by Ballinger, as collector of the revenue, and signed and sealed by Pawling, Todd, Adair and Kennedy, as his suretief, who pleaded that they delivered the same as an escrow to one Joseph

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[1] United States Bank *v.* Smith, 11 Wheat. 171; Fowle *v.* Alexandria, Id. 320; Thornton *v.* Bank of Washington, 3 Pet. 36; Chenowith *v.* Haskell, Id. 92; Johnson *v.* United States, 5 Mason 425; Jacob *v.* United States, 1 Brock. 521; Jones *v.* Vanzandt, 2 McLean 596; Patty *v.* Eddin, 1 Cr. C. C. 60.

[2] See Moss *v.* Riddle, 5 Cr. 351; Deindorff *v.* Foresman, 24 Ind. 481.

[3] See Dair *v.* United States, 16 Wall. 1; State *v.* Peck, 53 Maine 284; State *v.* Pepper, 31 Ind. 76; Millett *v.* Parker, 2 Met. (Ky.) 618.