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Statement of the case in the opinion.

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party who is alleged to have made them, to control the legal title which has descended to his heirs, a new source of insecurity in the tenure of property would be created, and heirs would often hold their possessions upon the uncertain testimony of interested parties, which it would be difficult and sometimes impossible to meet or explain after an interval of years, instead of holding them upon the sure foundations of the records of the country.\*

The decree of the court below must be

AFFIRMED.

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WEST TENNESSEE BANK v. CITIZENS' BANK.

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A case is not within the 25th section of the Judiciary Act when the judgment below is founded on a matter which is not within the section, even though it be founded also, for an independent base, on other matter which it is asserted is within it.

MOTION, by *Mr. Edward Janin*, to dismiss, for want of jurisdiction, a writ of error to the Supreme Court of Louisiana, in a case wherein the Bank of West Tennessee was the plaintiff, and the Citizens' Bank of Louisiana, defendant; the case having been brought into this court by a writ of error, issued under the 25th section of the Judiciary Act.

*Mr. T. J. Durant* opposed the motion.

Mr. Justice SWAYNE stated the case, and delivered the opinion of the court.

The plaintiff in error brought suit against the defendant in error, in the Fifth District Court of New Orleans, to recover the sum of \$93,380.97, for moneys deposited by the plaintiff with the defendant, and moneys collected by the latter for the former. All the so-called moneys received by

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\* *Biddle Boggs v. The Merced Mining Co.*, 14 California, 367.

## Opinion of the court.

the defendant were the notes of the rebel government. The District Court, on the 27th of March, 1867, gave judgment for the plaintiff. The case was thereupon taken by appeal to the Supreme Court of the State. That court, on the 14th of December, 1869, reversed the judgment of the court below and dismissed the case. In the opinion delivered it was said: "Under the constitution of 1868 the courts of this State cannot entertain an action based upon transactions in Confederate treasury notes. We think the evidence discloses that this case is founded upon dealings in unlawful currency, and the court has often refused to lend its aid to transactions reprobated by law." The constitution of 1868 was not in existence when the case was decided by the District Court.

The Supreme Court founded its judgment alike upon the constitutional provision and prior adjudications. Those adjudications are numerous and conclusive upon the subject.\* The constitution only declared a settled pre-existing rule of jurisprudence in that State. The result in this case would have been necessarily the same if the constitution had not contained the provision in question. This brings the case within the authority of *Bethell v. Demaret*.† Upon such a state of facts this court cannot take jurisdiction under the section of the Judiciary Act upon which the writ of error is founded. The motion must, therefore, be sustained, and the case

DISMISSED.

\* *Hunley et al. v. Scott*, 19 Louisiana Annual, 161; *King v. Huston, Hubbell & Co.*, Ib. 288; *McCracken v. Poole*, Ib. 359; *Norton v. Dawson et al.*, Ib. 464.

† 10 Wallace, 537.