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Statement of the case.

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such liability from ever arising. These special circumstances under which the law of 1865 was passed bring it still more clearly within the decision of *Curran v. The State of Arkansas*.

The decree of the Supreme Court of South Carolina must be

AFFIRMED.

Mr. Justice STRONG: I concur in the judgment given in this case, but not in all the positions taken in the opinion of the majority of the court. I cannot regard the eleventh section of the act of the General Assembly of South Carolina, passed December 21st, 1865, as amounting either to an assignment or a declaration of trust of the property of the bank in favor of the holders of the Fire Loan bonds. In my opinion it effected no transfer, either legal or equitable, and vested no interest in the creditors. Hence the repeal of the act by the legislature, in 1868, was no disturbance of any vested rights, and it is not obnoxious to the objection that it impaired the obligation of any contract. For this reason, and for this reason alone, I think the judgment should be affirmed.

Justices MILLER and DAVIS expressed their concurrence in what was said by Mr. Justice Strong.

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### HODGES *v.* VAUGHAN.

When the only defect in a transcript sent to this court is that the clerk has not appended to it his certificate that it contains the full record (there being no allegation of contumacy), a *certiorari* is not the proper remedy for relief to the plaintiff in error. He should ask leave to withdraw the transcript to enable him to apply to the clerk of the court below to append thereto the necessary certificate.

THIS was a motion made on behalf of the plaintiff in error for a *certiorari* upon suggestion of a diminution of a record coming on error from the Circuit Court for the

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Syllabus.

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Eastern District of Arkansas. The diminution alleged was that the clerk of the court below had not appended to the transcript his certificate that the transcript contained the whole record.

Mr. Justice CLIFFORD delivered the opinion of the court.

A motion for certiorari is founded upon a suggestion of diminution, and is designed to bring up some part of the record left back and not included in the transcript. When first presented, and without explanation, the court was inclined to grant the motion, but upon further consideration, we are all of the opinion that it must be denied, as the writ of certiorari is not a proper remedy for the alleged defect. Nothing is omitted from the transcript which is a part of the record in the court below. On the contrary, the only complaint is that the clerk has not appended to the transcript his certificate that it contains the full record. Such a defect, in a case of contumacy, might be remedied by a mandamus, but no application of that sort is made nor is it suggested that there are any grounds for such an application. Under the circumstances the motion for certiorari is denied, and leave is granted to the plaintiff in error to withdraw the transcript to enable him to apply to the clerk of the court below to append thereto the necessary certificate.

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### STOWE *v.* UNITED STATES.

Where a party gives to another a power of attorney, in blank, and defectively witnessed, authorizing \_\_\_\_\_ "to collect and receive any and all moneys due to him" from the government under an agreement specified, "and to make a good and sufficient release, acquittal or receipt for the same," and generally to do any and all things necessary in the premises—this power being by statute "null and void" from the defective execution—and the person to whom the power is thus given fills the blank with the name of an attorney at law, and instructs him to sue the government, and the attorney files a petition in the Court of Claims in the name of the principal in the power, "to the use and