mitted to the possession and use of it, added it to his capital, traded upon it, and made such profits and advantages of it as his skill or ingenuity suggested. Rose, in the meantime, was kept out of the use of it, and lost those emoluments and mercantile advantages which might have resulted from the use of it. It was not a case in which the property is locked up in a warehouse, or the proceeds thereof deposited in the hands of the register of this court, but a case in which the goods were, in fact, converted into money, by the effect of the stipulation bond, and the use of it given to Himely, to the prejudice of Rose: there could, therefore, be no radical objection to the charge, on the ground of equity. Had the mandate issued to restore to the party a flock of sheep, or stock, or bonds bearing interest, it is presumed, that it would have been construed to authorize the delivery of their natural or artificial increase, without any express words to carry them.

But it is said, that the mandate does not expressly authorize this allowance. This is true; but it must be recollected that the mandate of this court enjoins the allowance of equitable deductions. Now a variety of
*320] deductions *may be, in the abstract, equitable, but may lose that character by its being made to appear that ample compensation has been already made for them. It was in this light that the court below sustained the charge of interest: because, having had the usufruct of the property concerning which those charges on his part, which merited the denomination of equitable deductions, were incurred, it appeared to the court, in fact, that he had been compensated in part for those advances by the use of the money. If this court had not made use of the terms equitable deductions, that court probably would not have thought itself sanctioned in doing what appeared so equitable between the parties.

March 15th. *Martin* and *Jones*, for the appellant, moved to open the principal decree; and stated, that they were prepared to show that this court had been misinformed as to the law of St. Domingo. That they had further *arrêtes*, or ordinances of the French government, explanatory of that upon which the sentence was founded; and showing that the seizure of the property was the exercise of a belligerent, not of a municipal right.

They contended, that while the property remained out of the jurisdiction of the United States, it was lost to the libellants, and that Himely was entitled to a compensation for bringing it within their reach. That he ought to be reimbursed, at least, what he paid for the property.

C. Lee, contrà.—The appeal as to the execution of the mandate, gives no right to open the original decree.

No further order was taken in consequence of the motion.

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*321] *Welsh *v.* Mandeville & Jamesson.

Citation.

This court will not compel a cause to be heard, unless the citation be served thirty days before the first day of the term.

Youngs, for the defendant in error, objected to the hearing of the cause at this term, the citation not having been served thirty days before the first

day of the term. The service was on the 12th of January, and the first day of the term was the 6th of February.

E. J. Lee, contrà, contended, that it was to be inferred from the case of *Lloyd* v. *Alexander*, 1 Cr. 365, that if the defendant appears within the thirty days, the court will hear the case; or they will hear the case, after the expiration of the thirty days, even if the party does not appear.

Youngs.—The 22d section of the judiciary act (1 U. S. Stat. 84), requires that the defendant in error should have thirty days' notice by the service of the citation. The citation is to appear on the first day of the term, consequently, thirty days' notice must be by service of the citation thirty days before the first day of the court.

THE COURT refused to take up the case, without consent, although thirty days had then (March 9th, when the cause was called for hearing) elapsed since the service of the citation; and observed, that the case of *Lloyd* v. *Alexander* only decided that the court will not take up the case, until thirty days have expired since the service of the citation; but it did not decide, that the court would then take it up without consent.

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*RIDDLE & CO. *v.* MANDEVILLE & JAMESSON. [*322

Suit against indorser.

The indorsee of a promissory note, in Virginia, may recover the amount from a remote indorser, in equity, though not at law.

Equity will make that party immediately liable, who is ultimately liable at law.

The remote indorser has the same defence in equity against the remote indorsee, as against his immediate indorsee.

The defendant has a right to insist, that the other indorsers be made parties.

ERROR to the Circuit Court for the district of Columbia, sitting at Alexandria, in a suit in chancery, brought by Riddle & Co., against Mandeville & Jamesson, remote indorsers of a promissory note, dated March 2d, 1798, at sixty days, for $1500, made by Vincent Gray, payable to the defendants or order, and by them indorsed in blank. Upon its face, it was declared to be negotiable in the bank of Alexandria.

The note, so made and indorsed, was, by Gray, put into the hands of a broker, who passed it to D. W. Scott, for flour, which he sold for $1200 in cash, and paid the money to Gray. Scott passed it, without his own indorsement, to McClenachan, in the purchase of flour, and McClenachan indorsed it to Riddle & Co., the complainants, in payment of a precedent debt; Gray failed to pay the note, and was discharged under the insolvent act of Virginia, upon an execution issued upon a judgment in favor of the complainants upon the same note. The complainants then brought a suit at law against the defendants, upon their indorsement, and obtained judgment in the court below, which was reversed in this court, upon the principle, that an indorsee cannot maintain a suit at law against a remote indorser of a promissory note. 1 Cranch 290. Whereupon, the complainants brought the present bill in equity, which was decreed to be dismissed in the court below; that court being of opinion, that there was no equity in the bill. From that decree, the complainants appealed to this court.