

## Case No. 13,520.

STRACHEN ET AL. V. CLYBURN ET UX.

{3 McLean, 174.}<sup>1</sup>

Circuit Court, D. Illinois.

June Term, 1843.

COURTS—FOLLOWING STATE  
PRACTICE—REMEDIES.

The circuit courts of the United States adopt the local remedies of the respective states.

{This was an action at law by Strachen and Scott against Clyburn and wife.}

Mr. Spring, for plaintiffs.

Mr. Butterfield, for defendants.

OPINION OF THE COURT. This is a scire facias on a mortgage regulated by the act of the 17th of January, 1825 [Laws Ill. 1824-25, p. 157]. A motion was made to strike this case from the docket, on the ground that the act referred to is local, and does not apply to the courts of the United States. The act named gives a remedy by sci. fa. It provides that two nihilis shall amount to a service, which shall authorise the plaintiff to proceed to judgment. This court under various acts of congress and by virtue of its own rules, adopts the remedies authorised in the state courts, though they may be local and peculiar in each state. In Kentucky, a writ of right, modified by statute, is a common remedy; and that remedy is used in the circuit court of the United States. Under the statute, the plaintiffs had a right to issue a scire facias on the mortgage, and the motion is consequently overruled.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 