Blatchf. 259. Two years afterwards, in the case of *Graham* v. *Stucken*, 4 Blatchf. 50, Justice NELSON again goes over the arguments and authorities on the question as to the constitutionality of the act of 1789, in relation to consuls, and in a very lucid opinion maintains the act. The following passage from his opinicn bears directly upon the case under consideration. He says:

"Again, the grant of original jurisdiction to the supreme court is the same in the cases (mentioned in the previous clause of the constitution) in which a state shall be a party, as in the case of a consul. Those cases are controversies (1) between two or more states; (2) between a state and citizens of another state; (3) between a state and foreign states; (4) between a state and citizens of a foreign state—that is, aliens. Now, if the grant of original jurisdiction be exclusive, in the supreme court, in the case of a consul, it is equally exclusive in the four cases above enumerated; *for the grant is in the same clause and on the same terms.* And yet in the thirteenth section of the judiciary act, already referred to, it is provided that the supreme court shall have exclusive jurisdiciton, etc., where a state is a party, etc., except between a state and citizens of other states or aliens, in which latter case it shall have original but not exclusive jurisdiction. According to the argument, the whole of this exception would be unconstitutional, as the cases mentioned should have been vested exclusively in the supreme court."

Since this case was decided, in 1857, we find no case in any federal court where the constitutionality of the act of 1789, in relation to consuls, has been disputed, and it is very questionable if there is any doubt at the bar at this day as to the question. If there is no doubt —no question as to the power of congress to confer jurisdiction upon the inferior courts—in cases affecting consuls, why should there be in cases where a state is a party, since, as Justice NELSON well says, "the grant is in the same clause and on the same terms?" The motion to remand this case to the state court, from which it is brought here, is denied, with costs.

The lands involved in this case were the university lands of the state of Texas, situated in McLennan county, about 11 leagues in extent, and very valuable.

See S. C. 12 FED. REP. 1.

SAYER and others v. LA SALLE & PERU GAS-LIGHT & COKE Co. and others.

(*Circuit Court, N. D. Illinois.* March, 1880.)

1. REMOVAL OF CAUSE—CONTROVERSY BETWEEN PARTIES.
It is the duty of the court, on application for removal of the cause into the circuit court, to inquire into the interest the various parties have in the controversy, and to classify them on one side or the other in accordance with their interest; and if, when thus classified and arranged, it appears there is a controversy between citizens of different states, the cause is properly removable.

2. SAME—JURISDICTION, WHEN NOT TAKEN.
Where this court could not proceed with the cause without acting directly on the decree rendered in the state court, and the equity claimed by the bill could not be given to plaintiffs without interfering with that decree, this court will decline to take jurisdiction.

In Equity.

G. S. Eldridge, for complainants.

J. S. Cooper, for defendants.

DRUMMOND, C. J. A bill was filed in the state court by the plaintiffs as bondholders of what may be termed the old La Salle & Peru Gas-light & Coke Company, under a mortgage given by that company to secure a loan of $40,000. B. F. Allen was the trustee under that mortgage. The interest on the bonds was paid for several years, when default was made in the payment of interest. Between the execution of the mortgage and default in the payment of interest there was a claim filed against the company for a mechanic's lien on the property covered by the mortgage. A decree was rendered in the same court in which this bill was filed, and the property was sold under that decree for a comparatively small sum; and the Peru & La Salle Gas-light Company, a new company, claims to be the owner under the sale made on the judgment in the mechanic's lien case.

This bill alleges that that judgment was fraudulent, and asks that it be opened or set aside. It alleges further that although Allen, the trustee of the mortgage already referred to, was made a party, still, that he was a non-resident, and did not appear, and was brought in only by publication, and that he took no part and made no defense in the mechanic's-lien case. The bill further alleges that the new gas company has given a mortgage on the same property, and the main object of this bill is to enforce the prior mortgage on the property, and also a prior lien as claimed over the last mortgage, as well as the decree or judgment rendered in the mechanic's-lien case. The