claiming under the deceased or intestate, unless the same be commenced within five years next after the sale. But we prefer to affirm the decree for the reasons given, without passing any opinion on the effect of this statute.

DECREE AFFIRMED WITH COSTS.

BROBST v. BROBST.

1. Where the Circuit and District Judge agree in parts of a case, and dispose of them by decree finally, but are unable to agree as to others; and certify as to them a division of opinion, both parts of the case may be brought to the Supreme Court at once and heard on the same record.
2. A party allowed to enter an appeal bond, *nunc pro tunc*, in a case where the court supposed it probable that his solicitors had been misled by a peculiar state of the record and mode of bringing up the questions from the court below.

IN this case, in the court below, some questions had been disposed of finally by the Circuit and District Judges, and others were suspended by their inability to agree and a consequent division of opinion. An *appeal* was taken from the part covered by the final decree, and *a certificate of division upon the residue of the case.* No appeal bond had been entered.

A motion was now made to dismiss the appeal for want of an appeal bond entered into as required by the act of Congress. It was also objected that no appeal could be taken from the decision of the court below, until the certificate of division of opinion in the same cause between the judges was disposed of in this court.

Mr. Justice NELSON delivered the opinion of the court.

It appears that an appeal has been taken from that part of the case covered by the final decree, and a certificate of division upon the residue.

There is no objection to this practice. It has been recognized and acted upon in several instances in this court.

The questions arising on this appeal, and on the certificate of division, come up together, and are heard on the same record.

The omission to file the bond, under the circumstances, may be corrected by filing one in conformity with the act of Congress. The peculiar state of the record, and mode of bringing up the questions from the court below, probably misled the solicitors.

Let a rule be entered, that the appellant have sixty days from notice of it, to file a bond with the clerk of the court, to be approved by the proper officer, upon complying with which, this motion be dismissed; otherwise granted.

DAY v. GALLUP.

1. In trespass in a State court against the marshal of the United States for levying on goods which ought not to have been levied on, the marshal's title *as* marshal is not necessarily drawn in question. He may be sued, not as marshal, but as trespasser. Hence, a judgment in a State court against a marshal for making a levy alleged to be wrong, is not necessarily a proper subject for review in this court, under the 25th section of the Judiciary Act, allowing such review in certain cases where "an authority exercised under the United States is drawn in question, and the decision is against its validity."
2. Where a proceeding in the Federal court is terminated so that no case is pending there, a State court, unless there be some special cause to the contrary, may have jurisdiction of a matter arising out of the same general subject, although, if the proceeding in the Federal court had not been terminated, the State court might not have had it.

THE 25th section of the Judiciary Act provides that a final judgment in the highest court of law of a State, in which is drawn in question the validity of an "authority exercised under the United States," and the decision is against its validity, may be reviewed in this court. With this act in force, Gallup sued Derby & Day, Gear, and Allis, in a *State* court of Minnesota, in trespass, for taking and carrying away goods. On the 1st April, 1860, the defendants justified under certain writs of attachment and execution, issued out of the *Federal* court for Minnesota, in a certain suit therein