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Syllabus.

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BROBST ET AL. v. BROBST.

This court cannot take jurisdiction on a certificate of division in a case where the question certified is one of fact and can only be determined by an examination of the evidence in the record.

THIS case came here on a certificate of division from the Circuit Court of the United States for the Eastern District of Pennsylvania.

The record showed a litigation in respect to an alleged fraud in obtaining a deed of large tracts of land by the principal defendant from the complainant. The decree found the fraud alleged, and held the deed null as to the principal defendant, but stated that the judges were opposed in opinion on the question whether his four co-defendants, who claimed by deeds under him, were chargeable as privies to the fraud, and this question was accordingly certified to this court.

*Messrs. Brent and Merrick* moved to dismiss the case for want of jurisdiction.

The CHIEF JUSTICE: The question is one of fact, and can only be determined by an examination of the evidence in the record; and it has been repeatedly determined that only questions of law upon distinct points in a cause can be brought to this court by certificate.\*

An order must be made, therefore, remanding this cause to the Circuit Court, without answer to the question certified, for want of jurisdiction.

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EX PARTE MILLIGAN.

1. Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of *habeas corpus* for the purpose of inquiring into the cause of commitment, and they have

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\* *Wilson v. Barnum*, 8 Howard, 261.