

Opinion of the Court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is denied. It does not appear from the motion papers that the decree appealed from is collectible under ordinary execution. The fair inference from the statements in the papers is, that the suit was instituted to subject the lands in dispute to the payment of a debt, and that no personal decree for money can be given against the appellants. The controversy seems to be as to the rights of the appellee in the lands. The present bond is sufficient in amount to protect him against loss pending the suit from sales for taxes if he avails himself of the remedies by redemption and subrogation which the law affords. At any rate the circumstances of the parties do not appear to have changed in this particular since the security was taken originally.

CRANE IRON COMPANY *v.* HOAGLAND.WURTS and Others *v.* SAME.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

Decided October 23d, 1882.

Practice.

Motions to dismiss with which are united motions to affirm, to strike out certain assignments of error, and to advance, denied when, in the absence of a printed record, the assignment of errors in defendant's brief presents questions of which the court has jurisdiction.

The defendant moved to dismiss the writ of error, to affirm the decision below, to strike out assignments of error, and to advance the causes.

Mr. Theodore Little for the movers.

Mr. Shipman against.

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These are writs of error to the Supreme Court of New Jersey, and the motions to dismiss are made because, as is

Syllabus.

claimed, no federal question is involved. The records have not been printed, and on these motions we can look only to the statements of counsel as they appear in the briefs. The assignment of errors has been printed in the brief for the defendants, and the second and fifth assignments clearly present questions of which we have jurisdiction. Whether the errors thus assigned appear in the records we cannot on these motions, as they are now presented, finally determine, but in the absence of any showing to the contrary we will presume they do. The motions to dismiss must therefore be overruled.

The questions involved are not of a character that we are inclined to consider on a motion to affirm, especially before the record is printed.

It will be time enough to consider the objections to the assignment of errors when the cases come on for hearing.

The motions to advance the cases cannot be granted upon the showing made.

Motions denied.

WAPLES *v.* HAYS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Decided November 6th, 1882.

Confiscation—Mortgage—Subrogation.

1. A mortgaged real estate in New Orleans to B. Proceedings being taken against it under the Confiscation Acts as the property of A, B intervened. The estate was condemned and sold to C, and the proceeds paid to B under decree of court. After the death of A, suit was brought on behalf of his heirs to recover possession of the property : *Held*, that C acquired the life estate of A; that the heirs of A were entitled to recover; and that neither the United States nor C was subrogated to the rights of B; also,
2. That under the practice of Louisiana, C could not, after going to trial on the petition, object that it was defective by reason of not setting forth the deed under which he claimed title.

The questions presented in this case arose on the following facts :