

Opinion of the Court.

EX PARTE BALTIMORE & OHIO RAILROAD
COMPANY.

ORIGINAL.

Decided May 7th, 1883.

Mandamus—Jurisdiction—Practice—Replevin.

A writ of mandamus cannot be used to bring up for review a judgment of a circuit court on a plea to the jurisdiction.

Where a circuit court on demurrer vacated and quashed a writ of replevin for want of jurisdiction, it was a final judgment, and it was, if the case was otherwise within the court's jurisdiction, subject to review on a writ of error.

Motion to dismiss a petition for mandamus to the Circuit Court of the United States for the Western District of Virginia to direct that court to take jurisdiction in a replevin suit.

Mr. John K. Cowen and *Mr. Hugh L. Bond, Jr.*, for petitioner.

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

This petition shows that the Baltimore & Ohio Railroad Company brought an action of replevin against John E. Hamilton in the Circuit Court of the United States for the Eastern District of Virginia to recover the possession of certain railroad cars; that a summons for the defendant and a writ of replevin for the property were issued in the suit; that the defendant Hamilton was duly served with the summons; that the property sued for was taken by the marshal under the writ of replevin and delivered to the company; that a declaration was filed, and that before pleading thereto Hamilton appeared and moved to vacate the writ of replevin because the court had no jurisdiction to issue the same. This motion was heard, and thereupon the court ordered and adjudged "that said writ be quashed and vacated, and all proceedings subsequent to be of no avail;" and that the action "be dismissed at the costs of the plaintiff, for which execution may issue, &c."

Opinion of the Court.

This is a final judgment in the action and, if the case is otherwise within our jurisdiction, subject to review here on a writ of error. Upon such a writ the question of the right to maintain the action on which the case was adjudged below, if presented by the record, may be re-examined here. This being so, a writ of mandamus cannot issue. It has been often held that mandamus cannot be used to perform the office of a writ of error. *Ex parte Hoard*, 105 U. S. 578; *Ex parte Loring*, 94 U. S. 418.

In *Ex parte Railway Company*, 103 U. S. 794, it was expressly decided that a writ of mandamus could not be used to bring up for review a judgment of the circuit court on a plea to the jurisdiction. That is practically what is asked in this case.

The writ is denied.

SCARBOROUGH v. PARGOUD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Decided May 7th, 1883.

Limitations.

No judgment or decree of a State court can be reviewed in this court unless the writ of error is filed in the court which rendered the judgment within two years from the entry of the judgment.

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

The final decree in this case was rendered on the 13th of July, 1878, and while the writ of error was allowed by the Chief Justice of the Supreme Court of Louisiana, and a bond approved and citation signed on the 5th of July, 1880, the writ of error was not actually issued until the 14th, and the copy was not lodged in the clerk's office until the 16th of that month.

No judgment or decree of a State court can be reviewed in this court unless the writ of error is brought within two years after the entry of the judgment. Rev. Stats. § 1008;