

## Syllabus.

If Hiram Cable is not to be concluded by anything done in his absence, he ought not to be allowed to force himself into the suit at this late day. No sale made under a decree to which he is not actually or constructively a party can cut off his rights. If he can be bound by a decree in his absence, it is because he has been all the time represented in the suit by Philander Cable, under whom he claims, and as an intervenor he can do nothing that might not have been done for him by his representative without his intervention. He took his place by intervention in the suit subject to all the disabilities that rested at the time on the party in whose stead he is to act. If his application to have his rights in respect to the improvements he has put on the property settled in this suit can be entertained at all, it will be only as an incident to the original controversy, and whatever would bar a removal of suit before he intervened will bar him afterwards, even though by his intervention he may have raised a separate controversy.

This disposes of the case, for, as has already been seen, the right to remove this suit was barred long before Hiram Cable intervened. Without, therefore, determining whether Hiram Cable can claim the benefit of his improvements, notwithstanding the pendency of the suit, or whether, if his petition had been filed in time, he would have been entitled to a removal of the suit on the showing made,

*We affirm the order remanding the cause.*

TUPPER & Another *v.* WISE.

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

Submitted January 28th, 1884.—Decided February 4th, 1884.

*Jurisdiction.*

Distinct judgments in favor of or against distinct parties, though in the same record, cannot be joined to give this court jurisdiction.

Motion to dismiss, with which is united a motion to affirm.

Opinion of the Court.

*Mr. Henry Beard and Mr. Charles H. Armes* for the motion.

No brief filed *contra*.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. This was a suit brought by Wise, the defendant in error, against the plaintiffs in error and others to recover the possession of sec. 21, T. 3 N., R. 8 E., Mount Diablo base and meridian, containing 640 acres of land. Tupper answered, denying that he was in possession of any part of the section except the N. E.  $\frac{1}{4}$ , and to that he set up a pre-emption claim and settlement. Lenfesty made the same answer and claim as to the S. E.  $\frac{1}{4}$ . There was no joint ownership or joint possession. Each defendant claimed a separate and distinct interest in a separate and distinct part of the land. The jury found that the "defendants were each severally in the wrongful possession of the lands respectively described in their several answers and no others, and that the value of the rents and profits of the lands so held and possessed by defendant Tupper is \$100, of the land so held and possessed by defendant Lenfesty \$100, and that the value of each one of said tracts of 160 acres is \$3,000, and of the two of them \$6,000." Judgment was thereupon rendered against Tupper for the possession of his tract and \$100 damages, and against Lenfesty in the same way. Tupper and Lenfesty then sued out this writ of error, which Wise moves to dismiss, because the claims of the several plaintiffs in error are separate and distinct, and the value of the matter in dispute with either of them does not exceed \$5,000.

This motion is granted. The rule is well settled that distinct judgments in favor of or against distinct parties, though in the same record, cannot be joined to give this court jurisdiction. The whole subject was fully considered at the last term in *Ex parte Baltimore & Ohio Railroad Company*, 106 U. S. 5; *Farmers' Loan & Trust Company v. Waterman*, id. 265; *Adams v. Crittenden*, id. 576; *Schwed v. Smith*, id. 188. The stipulation as to the value of the property which is found in the record cannot alter the case, for it states that the aggregate value of

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the two quarter sections exceeds \$5,100, and the verdict fixes the value of each quarter at \$3,000.

*Dismissed.*

*Lynch & Another v. Bailey & Another.* This, like the case of *Tupper v. Wise*, just decided, was a suit to recover the possession of a whole section of land. Each of the plaintiffs in error was in possession of a separate quarter-section under a pre-emption claim. Their defences were separate and distinct, and the recovery against each was for the land that he separately claimed and occupied. The value of the recovery from either of the defendants does not exceed five thousand dollars, though the aggregate against all is more.

The motion to dismiss is granted for the reasons stated in the other case.

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THE STATE, RUCKMAN Prosecutor, *v. DEMAREST,*  
Collector.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF NEW JERSEY.

Submitted January 10th, 1884.—Decided February 4th, 1884.

*Error—Practice.*

*Grigsby v. Purcell*, 99 U. S. 505, followed ; holding that if the transcript is not filed and the cause docketed during the term to which it is made returnable, or some sufficient excuse given for the delay, the writ of error or appeal becomes inoperative, and the cause may be dismissed by the court of its own motion or on motion of the defendant in error or the appellee.

Motion by a defendant in error to docket and dismiss a case.

*Mr. Peter W. Stagg* for the mover.

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

This is a motion by Cornelius N. Durie, the successor in office of Demarest, the defendant in error, to docket and dismiss a case. From the motion papers it appears that Demarest, as collector of the township, recovered a judgment against the State, Ruckman prosecutor, in the Court of Errors and Appeals